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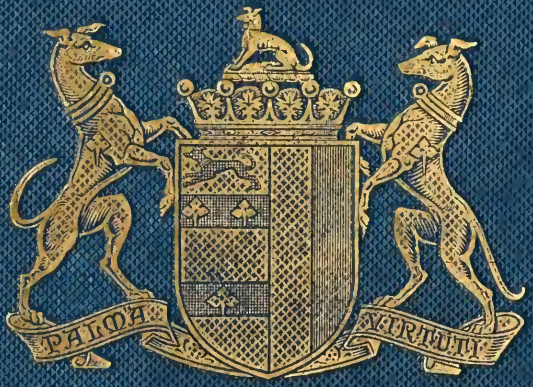

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MEMORIALS

PART II. PERSONAL AND POLITICAL

Selborne C.

MEMORIALS

PART II. PERSONAL AND POLITICAL

1865-1895

BY

ROUNDELL PALMER

EARL OF SELBORNE

LORD HIGH CHANCELLOR

'For they that say such things declare plainly that they seek a country.'

VOLUME I

London

MACMILLAN AND CO., LIMITED

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1898

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UNIVERSITY OF CALIFORNIA
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v. 3

NOTICE

These Memorials are a Trust; and therefore it has been my aim, however imperfectly carried out, simply to fulfil my Father's intention regarding them, to the best of my knowledge and judgment.

Sophia M. Palmer.

September 1898.

All letters which I have inserted are divided by lines from the original text. My thanks are due to my Father's friend, and for some time official secretary, Sir Kenneth Muir Mackenzie, for overlooking the legal parts and for the notes which bear his initials.

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TO MY CHILDREN

THERE are many things in this, as in the former Part of my *Memorials*, which may have for my children an interest which they would not have for others. In commending them to their love, I wish only to say that, as to matters of importance, I have generally thought it better to give the text of letters and other documents, when I have been permitted or have felt myself at liberty to do so, than to rely upon my own impressions: and when, instead of doing this, I have stated the substance, rather than the words, of important letters, this has been done, not by my own choice, but by the writer's desire.[1] I am sensible that I have given more space, in this Second Part, to my own opinions on public questions and the part which I took in them, and less to Family matters, than for some reasons I could have wished; whether too much space or not, it must be for others

[1] My Father refers to Mr. Gladstone. I ventured to ask him to reconsider his decision as to those letters of which he wished only *précis* to be given; but he did not see his way to granting my request, having, he wrote, made a rule against allowing his letters to be published.

rather than myself to say. I am also sensible, that in explaining the reasons for particular courses of action, I must sometimes unavoidably appear as an apologist: although it is by no means everything that seemed right at the time which I would willingly repeat, if the past were not irrevocable.

S.

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ILLUSTRATION IN VOLUME I

The Right Hon. The Earl of Selborne. From the Picture by Miss E. M. Busk at Trinity College, Oxford . *Frontispiece*

[This portrait was in the Exhibition of the Royal Academy, 1889, and was Miss Busk's last effort. She loved Art, to which she had given herself, and the future was leading her on with promises of joy and rich attainment, when, in her youth and strength, that summer, she died. Curiously, her own family owned none of her work; the few subject pictures she painted having been bought as soon as exhibited. In 1889, orders for portraits flowed in, more than she could undertake, and none of which did she live to fulfil. In connection with Professor Freeman's portrait (also for Trinity College, Oxford), the Bursar, Mr. R. W. Raper, wrote: "Professor Freeman had asked me to inquire of Lord Selborne how few sittings were necessary, as he was very busy and disliked the idea of sitting still doing nothing. Lord Selborne answered: 'Tell Freeman, when he has sat once to Miss Busk he will begin to consider how many, not how few, sittings he can possibly give.'" Miss Busk stayed repeatedly at Blackmoor while painting Lord Selborne's picture; and her talents, classical and literary tastes, width of interests, independence of mind, transparent purity and simplicity of character, and generous, ardent nature, combined to make her a friend to be desired.]

CHAPTER I

BLACKMOOR

DEATHS OF WILLIAM PARKINS AND MR. KEBLE—MY BROTHER EDWIN'S MARRIAGE—MY MOTHER—LADY ELIZABETH WALDEGRAVE.

1865–1867

Early in 1865 I learnt from my brother Horsley that Mr. Batson, the owner of the village and half the parish of Mixbury, but who had no house there, and seldom came near the place, was willing to sell it. My affection for Mixbury had often, while my Father lived, made me entertain in imagination the idea of purchasing it, and of building a house upon the Castle Hill. I therefore offered Mr. Batson a price which was more than the fair market value; but this he would not take, so I turned my thoughts into a different direction, which happened at the same time to open before me.

A friend of mine who lived in East Hampshire described to me, in attractive colours, a property in his neighbourhood which was then for sale. It

was the "Temple" estate, in the parish of Selborne, where in ancient days there had been a Preceptory of the Knights Templars, about which all that is known may be found in Gilbert White's book; and together with this, there were three other properties adjoining to and convenient to be held with it, which were also in the market; the largest of them named Blackmoor, famous in White's pages for its oaks, and deriving its name from a moorland ridge of the neighbouring Forest, of which its higher part is a natural continuation to the west and south. All these together made a fairly compact estate, which I succeeded in purchasing at the end of 1865.

Though not a sportsman, I had been a lover of the country and of country pursuits from my childhood; and, when once brought by the treaty for Mixbury to think of investing in land, I was easily attracted by this picturesque district of East Hampshire, half-way between Alton and Petersfield, in a county and diocese to which I was attached by the associations of my boyhood with Winchester.

I had, indeed, some misgivings as to the prudence of exchanging investments in the funds, productive of a fixed income without care or risk, for property not equally remunerative, and which might become much less so (as in the event it did), and might also entail upon me many expenses, some necessary, some optional, yet hardly to be avoided by a resident owner with duties to be performed and tastes to gratify. But my solicitor thought (as most people then did) that of all forms of property, land was the

most secure, and the most certain to maintain its value, and at that time all the farms were well let to substantial tenants.

The estate which I bought extended downwards from the village of Selborne (situate on high ground where the upper greensand, a firm white rock, lies immediately below the chalk downs), across a narrow but deep stratum of yellow gault clay, to the lower sands of Wolmer Forest. The Forest is a wild heathy tract, broken up into numerous ridges of moorland, with valleys below; its eminences crowned with plantations, chiefly of Scotch fir; and among them, eastward, a very conspicuous and picturesque mound covered with firs of greater age and height than the rest, called Holywater clump, and forming a fine central object in the whole eastern landscape. Beyond this lie, towards the north and east, a tract of richer land,—Alice Holt, a forest of oaks, extending most of the way to Farnham; the parishes of Headley and Bramshott,—and on the horizon, the long line of Hind-head dividing the counties of Hampshire and Surrey, blended indistinguishably with that of Black Down in Sussex, though between them is the valley of Haslemere, through which the Portsmouth railway runs. There were, on my new estate, several changes of soil within a short compass, with a corresponding variety of surface and of natural productions. It produced hops, equal perhaps in quality to the best of those in the Farnham district. The upper greensand formation terminates everywhere, towards the clay, in low cliffs or escarpments called "hangers,"

well wooded with beech and oak, up to which narrow winding valleys run in various directions, like creeks of an ancient sea. The band of clay was in most places covered with oak timber, of no great age; for the oldest and largest trees, generally, had been cut down for shipbuilding during the war with France. Down the valleys run small streams, feeders of the Wey on one side and of the Arun on the other. There is nothing, however, which deserves the name of a river;—the only considerable body of water is Wolmer Pond, which lies on the margin of the Forest near its western boundary, separated from Blackmoor by the main road between Farnham and Petersfield —itself so shallow, and so destitute of any supply from natural springs, as to be nearly dried up in all but very wet summers.

When I bought this property, there was no house upon it in which it would have been possible for us to live. After considering various sites, some of them on high ground and commanding extensive views, but not easily accessible, we chose that on which there was in 1865 a farmhouse not wanted for a homestead. This site was on the edge of the wild moorland; divided, however, from Wolmer Forest (which then belonged and still belongs to the Crown), by rough ground, called Southay Common.

The site chosen for my house was a little below the summit level of the Blackmoor ridge, itself much lower than the escarpments of the upper greensand, but raised above the general level of the Forest sufficiently to overlook its western basin, and to command

good views of other ridges towards the east and south, of which some were wooded, some bare. Blackmoor stretches round to the south-west, lying partly on the loose sand of the Forest and partly on the gault clay. The farmhouse stood on the sand; but the junction of that formation with the clay was within a few yards to the west, where there was a small island surrounded by a moat, with a wood of oaks beyond. Close to the house in front were two of the oldest trees which the axe had spared; and, on the slope from it, towards the main road, upon the wild ground covered with fern-brake and gorse, were other oaks, giving the place a picturesque park-like appearance. Beyond these, glimpses of Wolmer Pond and a little pool in front let light into the scene. A stretch of rising ground in front of the farmhouse and a field or two behind, ascending towards the summit level of the ridge and sheltering the house from the north winds, were partly in grass and partly under plough,—separated from the wild land by a bank, in parts steep, and in others broken down, which might perhaps have been an ancient earthwork.

When I chose this as the site of my future country house, I did not know that it had been many centuries before a British settlement, of Roman and earlier times; an *oppidum*, probably, such as is described by Cæsar,[1] divided from the wild land eastward by a trench and embankment, and protected in the rear by thick woods

[1] "Oppidum autem Britanni vocant, quum silvas impeditas vallo atque fossa munierunt" (Cæsar, *De Bell. Gall.* lib. v. 17).

upon the clay. But when I added such rooms to the farmhouse as were necessary for our immediate wants, and formed gardens around it, and laid out and planted the fields in front and behind, many fragments of pottery and some large vases were discovered, with a finely enamelled bronze cup and other articles of ancient metal-work—the greater part of Roman-British times, some going as far back as to the reign of Marcus Aurelius, A.D. 161-180. Ever since that time, the proofs that Blackmoor was a British village or town have been multiplied. When trenching for a clump of trees to be planted at no great distance in front of my house, in October 1873, two vases were unearthed, containing nearly 30,000[1] bronze coins of the Lower Empire, closely

[1] They were, when found, closely packed, caked together, and covered with verdigris. With the help of my son-in-law, Lord Waldegrave, I examined and sorted them, and succeeded in identifying 29,788 ; of which about 3000, cleaned and properly arranged, are now in a cabinet at Blackmoor. There were altogether 1093 varieties, of the coinage of thirty-three princes (including four empresses and eight "Tyrants," as the Romans called them), extending over a period of sixty years, from A.D. 238 to A.D. 297. I contributed an account of this "find," with a complete catalogue, to the 17th volume of the *Numismatic Chronicle*, and also (without a catalogue) to Mr. Buckland's and Professor Bell's editions of White's *Selborne*.

[Sir John Evans, M.P., President of the Numismatic Society, at the Annual Meeting in 1895, said : "Lord Selborne's connection with this Society originated in a somewhat remarkable manner. In the year 1873, at a time when he was Lord Chancellor, a hoard of nearly 30,000 Roman coins, which had been deposited at the end of the third century, was found at Blackmoor, Hants. In this discovery he was much interested, and promptly set to work in order to acquire sufficient numismatic knowledge to arrange and appreciate the coins. He then made a complete examination of the whole hoard, which his classified list shows to have comprised 29,788 pieces, and in March 1877 communicated to us a detailed account, mentioning the types

packed together, ranging from Gordian the younger (A.D. 239) to Constantius, father of Constantine the Great (A.D. 295), and including a large number of the coinage of those provincial rulers whom they called "Tyrants" at Rome,—Postumus, Victorinus, Marius, Laelianus, the two Tetrici, Carausius, and Allectus. In the line of one of my plantations, just within the trench and bank which divided the cultivated from the wild rough ground, we find, whenever the ground is opened, a *stratum* of small fragments of pottery, of many varieties of ware and colour, among which there are sometimes coins, chiefly of emperors later than Constantine the Great; and in other parts of what is now the park, westward of that line, fragments of the same character are often brought to the surface by rabbits. Roman bricks and tiles, and nails and other small articles in metal-work, are met with in the same places. In the rough ground, outside and to the eastward of that line, though it has in several places been trenched for planting, nothing of the same sort has been found; that line, therefore, may be taken as marking the boundary of the ancient settlement, and the land which I found under cultivation in 1865 must have been cultivated or occupied from a remote antiquity. That the people who occupied it were Romanised Britons, and not properly Romans,

given in Cohen, and giving descriptions of all those not comprised in that work. A more remarkable monument of skill and patience on the part of one whose avocations were so numerous and important, it would be difficult to find. Of his personal character I cannot speak too highly. There are few to whom it has been given to be so greatly loved and esteemed."—S. M. P.]

I infer from the absence of inscriptions, altars, etc., and of the precious metals, and (except in the single case of the enamelled bronze cup) of any appearance of high art or tasteful decoration; and also from the fact that a number of swords and spear-heads, which were dug up from below the peat a little beyond my boundary —hacked and broken to make them useless in the hands of an enemy, and having close to them a small earthenware pot containing about a hundred coins of Gallienus, Victorinus, and the Tetrici—were of bronze and not of iron. The Roman weapons of imperial times were always iron.

We got into our first house at Blackmoor, and began our planting, in the summer vacation of 1866. These operations were full of interest: and, though the place was then, and for some years continued to be, very much in the rough, and all the pleasure-grounds had to be created, laying them out was a delightful occupation, in which I was much aided by my brother Horsley's taste. For the plan of our gardens, we were indebted to Mr. Brodrick Thomas, a Sussex gentleman, and a professional landscape-gardener. Our children enjoyed the fine air, rambling over the Forest and in the woods; and we found in the neighbourhood very pleasant society. Among our nearest neighbours were Lord and Lady Cranborne at Headley, Sir William and Lady Erle at Bramshott, my old college friend George Kettilby Rickards[1] at Empshott, and Professor Bell at Selborne.

Lord Cranborne had succeeded to that courtesy

[1] Afterwards Sir George Rickards.

title on the death of his elder brother in June 1865; and he continued in the occupation of a small house at Headley, half-way between Blackmoor and Hindhead, till April 1868, when his father died, and he became Marquis of Salisbury. I had known him well since his College days, when he was one of my brother Horsley's friends; and from Lady Cranborne's father, Baron Alderson, I had received much kindness. As Lord Robert Cecil he had gained in the House of Commons the position of an orator of considerable debating power, holding himself more independent of party than most men on the Conservative side of the House. His style of speaking was vigorous, acid and incisive. I was often in conflict with him; he was friendly to the Confederate States, and no man delivered harder blows against the Government in the contests of those days, of which I got my share, for he spared neither friend nor foe. Notwithstanding this, we were in private life fast friends. We lived near each other in London, and our children were a good deal together there; and in September 1864 I stood sponsor to his third son, Robert, who is now[1] entering, with every promise of success, upon my own profession of the law.

Sir William Erle was married to the eldest daughter of my old master, Dr. Williams: they had no child. He was a Wykehamist, as staunch as myself, and had been Fellow of New College. He rose rapidly at the Bar, and had not been long in the House of Commons (where he sat as member for the

[1] June 1889.

City of Oxford) before he was made a Judge. When, in 1861, Sir Alexander Cockburn succeeded Lord Campbell as Chief-Justice of England, Sir William Erle, with universal applause, was made Chief-Justice of the Common Pleas: a post which he retained till the winter of 1866. As a Judge he was very zealous for justice, especially to those whom he thought likely to suffer from prejudice at the hands of juries. He was a man of quick, strong intellect, generous, and compassionate even to tenderness, loving towards men and all dumb creatures; liberal and public-spirited, a staunch friend, and a good Christian. He had long honoured me with his friendship; and it was a good deal owing to his persuasion, and to the attraction of his society, that I made my Hampshire purchase.

At Selborne, Professor Bell was the owner and occupier of "The Wakes," Gilbert White's house, and White could have had no more worthy successor: he reverenced his memory, and published an edition of his work, fuller and better than any which preceded it. He was then an octogenarian, or nearly so, and had been Secretary to the Royal Society, and a Professor at King's College, London. He was familiar with every branch of natural history, and never grudged time or trouble to any one who wished to consult him. In courtesy, geniality, and everything else which is characteristic of the true gentleman, he could not be exceeded; and, though conversant with all new lights, he found no reason in any of them to forsake the old. We had at Black-

moor, besides these, other excellent neighbours; the people of the labouring class were generally intelligent and obliging, and (in comparison with many other parts of the country) fairly well off.

There was one drawback upon these pleasant lines into which our lot had fallen. We were three miles from the church of Selborne (our parish), and full half that distance from any other. The nearest church was at Greatham, the first village on the road towards Petersfield: and we used to drive to Selborne on Sunday mornings, and to walk to Greatham in the afternoon. One of my earliest resolutions, after taking possession of our new home, was to build a church in that lower part of Selborne in which Blackmoor was situated, and to have the district made into a new parish. In the prosecution of that object I was aided by Frederic Parsons, then Vicar of Selborne, who in the early days of my connection with Magdalen College, had been tutor there, and was a good scholar, and a man of many accomplishments. He had, indeed, the best reason to know that such a subdivision of his parish was wanted. There was in that part of it which would naturally form the new district, a population of about 700, scattered in small clusters of houses, with only one considerable hamlet. That work was taken in hand soon after my residence at Blackmoor began. Mr. Alfred Waterhouse was my architect. I had been brought into communication with him over the plans for the new Courts of Law, and both liked him

personally, and thought highly of his professional work. The church, which now stands at a distance of ten minutes' walk north of our house, was built from his plans, and under his superintendence, by local masons and my own carpenters. This, and the building of a vicarage and schools and some more cottages, took the best part of three years. All the lower part of Selborne, — in extent the larger part, — was made, for ecclesiastical purposes, the new parish of St. Matthew, Blackmoor; and the Church was consecrated on the 18th of May 1869. Bishop Claughton preached the sermon; and many of our most attached friends were present. On the day before we gave a dinner to the workmen and to a large body of the tenant farmers and labourers. In addressing them, I said, speaking then, if ever, from my heart—"Most men, at some time of their lives, desire to do some work which shall last after them, and which shall help those among whom they live when they themselves shall have passed away. And from the bottom of my soul I hope and pray that this undertaking, to be inaugurated (we trust) to-morrow, may prove to my children and my children's children, and to generation after generation of their neighbours, the inhabitants of this place, a real and ever-increasing blessing." It was a happy day.

An excellent clergyman, George Edward Jelf (now Canon of Rochester), had accepted the charge of our new parish, and no man could have organised it better, or done more to attract and attach to the

Church the scattered population of what before our coming was a wild moorland district.

There was no department of pastoral work which did not prosper in his hands; gentle, earnest, affectionate, and never sparing himself, he made what had been a wilderness bring forth, in a very short time, much fruit; and he gave our schools from the beginning, with the aid of an excellent schoolmaster, the character which they have maintained; their work has been excellent from that day until now. Three years after the building of the Church the use of a wayside chapel at Blackmoor was discontinued, and the proprietors, of their own accord, offered to sell it to me. I purchased it, and enclosed and planted the site; and Mr. Jelf suggested that the memory of its former use should be preserved. I wrote this inscription for a stone intended to mark the site:—

> Here in past days, ere yonder House of God
> Rose in due state, a humble chapel stood.
> Trees of the Lord, in every season green,
> Shall guard its memory with their leafy screen.
> Blest, though not walking in our fathers' ways,
> The men who woke the wilderness to praise!

To Mary Dorothea Palmer

Dogmersfield Park, Winchfield,
Easter Eve, 1865.

What will Lolly say to to-day's great news of the capture of the capital of the Confederates by the Northern Army? We shall soon be able to say that the war is over, and slavery finally abolished in North America!

We shall think of you, darling, in church to-morrow. If it had been your *first* Communion we should have felt the separation from you more—though, indeed, on these occasions it does not seem to be separation, even when we are not bodily together.

Kisses to L. E. P., S. M. P., S. W. P., W. W. P. How has the pony been behaving?—Ever your affectionate Father,

ROUNDELL PALMER.

To Laura Elizabeth Palmer

6 PORTLAND PLACE, W.,
Aprilis quindecimo, A.D. 1866.

Epistola carissimae filiae patrem multum delectavit. Non mirum est, si in errores quosdam incideris, linguâ peregrinâ noviter scribere conata; quos ego satis castigatos tibi remitto, ut intelligas quid sit evitandum, si posthaec Latine scribere aggredieris.

Magnum jam commissum est certamen in comitiis popularibus de lege Reformationis; neque finis expectandus est, ante quintum abhinc diem. Victoriam autem nobiscum fore, minimè dubium esse censetur. Mater tua nuper ad Silvam Borealem profecta est, et sorores tuas et fratrem complexa est. Valent omnes; sola Wilfreda catarrhum habet gravem; et Sophia pallescere aliquantulum plus solito visa est. Isto loco semper pluit; quamobrem multum temporis intra fores consumpsere.

Osculare pro me, et pro matre tuâ, sororem dulcissimam Mariam; osculare etiam, si fieri id possit, teipsam, amitam Elizabetham benigne saluta. Vale, dilectissima filia.

ROUNDELL PALMER.

To the Rev. Frank Faber

6 PORTLAND PLACE, 12*th June* 1867.

My dear, most faithful, and most patient of friends, who but yourself would have understood me? Who but yourself would have gone on writing?

As to ourselves, all is well. My girls are simple, happy, full of interests and resources, high spirits and good principles. My boy is getting on for *eight!* is spirited and quick, and I hope

may make a good scholar as well as a good rider, etc. My Mother is much the same: feeble in body, but always very sweet and cheerful, and my sisters Emma and Emily (*ut semper*) all goodness. It is a very great comfort to us all having them so near.

Cyril and Eleanor Wood have just settled at Stogursey in Somersetshire; not far from the scenes of some of Wordsworth's and Coleridge's Lyrical Ballads, among the Quantocks. William is living his own life in Rome; Horsley and his wife are well and helping me a good deal at Selborne, near which he has bought a little property (Coldhayes); and lastly, *Edwin*—(what do you think?)—is actually just engaged to be *married!* to a sister of his late dear friend, James Riddell of Balliol.

Now I will tell you about Selborne. On the edge of my property, near Wolmer Forest, stands our house; a small one at present, just large enough to hold us, but hereafter to be made larger. Meanwhile we are making gardens, building cottages, and having a district formed, for which the church, vicarage, and schools are also building.

A pleasant *Tusculum* it will be, I hope, for us while we live; and a nice *pied-à-terre* for our children after us. The country is beautiful: with much oak timber; and some really romantic gorges and glens; but, as in White's time, the vilest of roads.

So much *de rebus privatis:* now for a few words *de republicâ.*[1]

. . . . . .

R. PALMER.

To visit Selborne had been sweet,
No matter what the rest might be;
But some good genius led my feet
Thither in such fit company
As trebled all its charm for me.

With them to seek his headstone grey,
The lover true of birds and trees,
Added strange sunshine to the day:
My eye a scene familiar sees
And Home! is whispered by the breeze.

[1] For the remainder of the letter, see Chapter III.

My English blood its right reclaims;
In vain the sea its barrier rears;
Our pride is fed by England's fames,
Ours is her glorious length of years,
Ours too her triumphs and her tears.

JAMES RUSSELL LOWELL.

22*nd October* 1880.

(Written on our return from his first visit to Selborne.—S. M. P.)

On the 10th of February 1866 I lost by death William Parkins, to whose virtues I have paid a tribute in the earlier part of these *Memorials*. He was four years older than myself; and had been my clerk from the beginning of my practice at the Bar. He was prouder than myself of the success which I had obtained, and was probably more ambitious for my further advancement. If it were for man to choose in such matters, I could have wished him to see the day when his expectations were fulfilled: but it was not so ordered. Into his place succeeded a younger man, of very good ability, and with more advantages of education,—George Lewis Tripp, whose father had been in the service of Sir Stafford Northcote, and who had come into my chambers as junior clerk, when a mere boy, not long after my marriage. Parkins trained him admirably, and his principles and conduct were all that could be desired. He served me well during the rest of my time at the Bar; but died prematurely, soon after I became Lord Chancellor.

To the Rev. Edwin Palmer

House of Commons, 12*th February* 1866.

It is desirable not to delay the funeral. It is to be at Shalstone, on Ash Wednesday, unless I hear to-morrow to the contrary.

I shall be glad to meet you there: on such occasions one feels thoroughly the communion between the living and the departed, and it may be hoped we all go away with a stronger sense of the preciousness of the blessings which we have had, and of those which we still have, and with increased strength for whatever we may be called ourselves to do or to endure.—Ever yours most affectionately, R. P.

To Miss Laura Oldfield

6 Portland Place, 12*th February* 1866.

Our hearts here are all very sore, for we have lost that dear, faithful servant, clerk, and friend, Parkins, who had been thirty-nine years in the family. You know how identified we and our children were with his very being; our children were his, and my husband and he were always "we"; and to him I felt I could go in every domestic difficulty without troubling Roundell. I can hardly write about it. Lolly and Mary feel it very much, and the other three are very solemn. He was like Joseph of old, "the Lord was with him," and we certainly were blessed for his sake; he has done his work faithfully and well, and trained the young clerks under him in a wonderful way, and his memory will be blessed. The loss to my husband cannot be expressed. So much for ourselves.

I send you these books as a little present to amuse you. Of *Ecce Homo*, Mr. Gladstone was full, when Edwin was at Hawarden the other day; said it was the most powerful defence of Christianity he had seen for a long time. The authorship is a secret. Roundell thinks *Ecce Homo* powerful. The writer endeavours to maintain the attitude of a questioner, but I think his belief in Christianity declares itself, perhaps despite himself. There are the wildest conjectures as to the author, men so

opposite as Goldwin Smith and Dr. Newman being among them; but, so far, the secret has been kept.—Yours very affectionately,

LAURA PALMER.

On the 29th of March in the same year, Mr. Keble died. I was one of very many who felt for him a peculiar reverence. Memorials to the dead had not then been degraded into a fashion, levelling all degrees of merit,—and to Mr. Keble's honour the most splendid and enduring memorial of our time was erected, in which it is a pleasure to me to have had some share. There was nothing like it before; and there has been only one thing like it since,—the College at Cambridge which bears the name of another great Churchman, also very dear to me, illustrious for work of another kind, and of a character not less noble and unworldly.

In the autumn of 1866, Arthur Gordon exchanged his government of New Brunswick for Trinidad; a colony in which he found better scope for his powers. He had, in September 1865, married the eldest daughter of Sir John Shaw Lefevre, and so became connected with my wife and myself, almost by family ties; for, although we could not claim blood-relationship with the Lefevres, Lord Eversley, the head of that family, was my wife's uncle by marriage. Lord Eversley's qualities, mental and physical, suited exactly the office of Speaker of the House of Commons, which he filled with great honour and efficiency for many years; but in natural ability, and in acquirements of many kinds, he was not his

brother's equal. Sir John Lefevre had been Senior Wrangler at Cambridge, and was one of the best linguists in Europe. He served the State well, without ostentation or self-seeking, in many public offices; proving himself in everything a wise and sagacious man, as discreet and modest as he was able. No better choice than Arthur Gordon's could have been made; his wife was a great help to him in all the governments to which he was successively appointed, during a happy married life of more than twenty-three years; and, as long as Sir John Lefevre lived, he was the best of counsellors.

My brother Edwin, who was appointed tutor of Balliol in 1866, after having been lecturer there for ten years, married, in 1867, Henrietta Riddell, whose brother had been his dearest friend.

To Miss Henrietta Riddell

30 Portland Place, 13*th June* 1867.

Of dear Edwin it would be impossible to write all that his brother and I feel about him. Having been writing in my husband's and my own name, I shall venture to say a little on my own account, as my position is exactly what I trust yours will be one day—that of one introduced into the family by the most sacred of ties. I have been married now nineteen years, and the feeling lies too deeply in my heart to say all I could say of that very dear Mother who is now living, of the Father who is gone, but whose love and wisdom are our household gods, and of each dear sister and brother. I can only say that I feel quite and absolutely as if they were my own flesh and blood, and the love and kindness that welcomed me into the family has gone on from year to year increasing and strengthening with time,

and has made my married life a very happy one, and, under God, I trust a life of mutual blessing and comfort. I am sure you will bear the same testimony in time, and feel that there are few daughters-in-law so fortunate as we are. I hope, from what Eddie says, you will soon be seeing his Mother, who is the prettiest old lady to be seen, and then we may have an opportunity of beginning our relationship (in anticipation!) of sisters.—Believe me, yours affectionately, LAURA PALMER.

Edwin's marriage was to my Mother a great happiness. For the last two years of her life she was very near us, in Park Square, West, just beyond the north end of Portland Place; and we had the comfort of being constantly with her. Her strength, never great, was visibly declining, and she passed away peacefully during the night of the 1st December 1867,—a very tempestuous night, as I well remember; the contrast of which with that peace within, as I walked home through the storm, touched me deeply. We laid her body, a few days afterwards, by my Father's side in Mixbury churchyard. From the illness which prostrated her during the critical time of my youth, she gradually recovered, and in my Father's latter days she was able to repay all his care and watchfulness. Her devotion, together with my younger sisters, to my sister Mary in 1859, was wonderful; nor was she less loving and tender to the rest of her children; as I especially have cause to know, having been the one who during my boyhood gave her most trouble. If, in the former part of these *Memorials*, less frequent mention has

been made of her name than of my Father's, it is because, on all subjects of importance, his thoughts were hers, and his letters represented her mind as well as his own. There was always unreserved confidence and community of thought and feeling between them; and nothing was done by one without the knowledge and participation of the other. My Mother's letters were generally about the common events, interesting at the time, of the passing day, and were written for the time only: it was her habit to tell us to burn them, and she was obeyed. It has been a matter of regret to me, since her death, that some at least of them, which might have made her better known to her grandchildren, were not preserved.

While the mourning for my Mother was fresh, my wife was suddenly called to Hastings by the illness, which in a short time proved fatal, of her eldest sister, Lady Elizabeth Waldegrave. No affection could be more perfect than that between those sisters.

HASTINGS, 5th *January* 1868.

MY DEAREST DAUGHTERS—I need not tell you how Mamma's and my own thoughts turn to you while we are apart from each other; yet, as we well know, united (if possible) more closely than before by her great sorrow, which is mine and yours also. It is a privilege to have among those who are with the Lord, so many who loved, and we may well believe, still love *us* dearly, and to whom *our* souls are still united, through Him, by a love which, if on earth it was sometimes clouded by sin and infirmity, is now altogether holy and pure. And not less blessed is the hope that in these dear ones, whom

we are entrusted to bring up, God is raising up for Himself *another* generation of faithful children, who, when we are gone, may be to others what our parents and your dear Aunt Elizabeth, and others have been to us, and who, in their turn, when their work in this world is done, will take their place among the blessed company of the saints in Heaven. Such hopes as these make us content to bear whatever God sends us here, and impart glory as well as joy to this life, and to all its changes. Even from our early youth it is well to think of these things, and to lay to heart each lesson as it comes: so we shall be stronger to bear other trials (which come to many before they are looked for), and to do the duties which those trials bring with them.

And now, my darling children, what is the particular duty which this last trial has brought to *us?* The answer will, I am sure, come to your hearts before I write it. It is, that both you and I must try more than ever to comfort dearest Mamma, and make her as happy as ever we can, by being tender and thoughtful, and considerate towards her in all things, and helping her, as far as we are able, to bear all her burdens. We know that enough was laid upon her before, and there will be more now. But God never gives His children anything to do without also providing the means by which it may be done: and one of these means may be the increased power of helping in many ways, which, as the years go on, you will have.

We are pleased to think that your company has been acceptable, and a refreshment to May Grey at Sunningdale; indeed, you could not have been in any place more suitable to such a time; for that, too, is a house of mourning, and you see in Mrs. Whitbread how little cause we can have to wish for a longer term of life than God in His goodness may see fit to apportion to the work we are called upon to do.

God bless you ever, my darling children, and make you *His own;* that is the one thing, the only thing to be really desired.—Ever your affectionate Father, R. P.

CHAPTER II

COURTS OF JUSTICE ACTS—CASE OF MRS. RYVES —LORD WENSLEYDALE—LORD RUSSELL—LEGAL CHANGES—LAW REFORMS—LEGAL EDUCATION.

1865–1867

I WAS from the first an active supporter of the plan for the concentration of the Courts of Justice upon their present site between Carey Street and the Strand, and for the appropriation towards their cost of large funds accumulated in the Court of Chancery, which, belonging to no individual suitors or representatives of suitors, were justly at the public disposal. The original author of that design, and the moving spirit in the Commissions which inquired into and reported upon it, was Mr. Edwin Wilkins Field, a solicitor whom I had known from the days when I was a pupil in Mr. Booth's chambers, and one of the most energetic and accomplished men who adorned that branch of the legal profession.

The Bills for the object which Mr. Field and I had at heart were introduced and passed in 1865, while I was Attorney-General, and Lord Westbury Chancellor. There was opposition from the Lincoln's

Inn interest, represented by Charles Selwyn,[1] afterwards Lord Justice. If it had succeeded, there would have been no perfect concentration; the Equity Courts would have been separated from the rest, and that union of legal and equitable jurisdictions, which in due time followed, might have been frustrated. The men who professed to speak in the name of architectural taste, while not opposing concentration, objected to the proposed site; they made a strong effort (which was repeated four years later, in 1869) to have it transferred to the Thames Embankment. If they had prevailed, the benefit of a situation, central between Lincoln's Inn and the Temple, and equally near to both,—conditions of the scheme which were of great practical importance,—would have been lost. As Attorney-General in 1865, and again when out of office in 1869, I resisted, with as much energy as I could, the sacrifice of practical utility to sentiment in this matter: and I carried my point against a combination of influences, which (in the latter of those years) was formidable enough, headed by Layard, then First Commissioner of Works, who was supported by several members of the Government, and aided by all the influence which the Metropolitan Railway Company (who had a pecuniary interest in the choice of the Embankment site) were able to exert; and most of the residents in the Temple were induced to stand neutral.

This was the legislation of most importance to the

[1] M.P. for the University of Cambridge: younger brother of the Bishop of New Zealand, afterwards Bishop of Lichfield.

administration of justice, which I had to conduct as Law Officer of the Crown.

Lady Layard has allowed me to give these extracts from letters written by Sir Henry Layard to Sir William Gregory at the time.—S. M. P.

13th *May* 1869.

We shall have a heavy fight with the Embankment site, but I think that we shall carry it. Elcho has been this morning with Dizzy, and has shown him all the plans. He expressed himself on the whole favourably. A good number of men on the Conservative side will go with us. The chief opposition, curiously enough, comes from our own side, from below the gangway. It is most important to get the Irish right. Palmer was furious, stamped on the ground and clenched his fist, to the amusement of the House! The attorneys of the Law Institution will move heaven and earth against us, so we must be prepared. Unfortunately they have great influence in the Press. You see that the *Times* has gone round.

Madrid, 5th *March* 1870.

I grieve that all the great schemes which I had projected should have failed—but I could not have carried them out as you saw by the result of the Law Courts Committee. It was upon the proposed alteration of site of the Courts that everything hung. If that had been carried London could easily have been made one of the finest, if not the grandest capital in the world—as innumerable improvements would have followed of necessity.

Besides the case of the *Alexandra*, there were some other State trials, in which I was during those years engaged;—only one of them, however, had much historical interest. This was the case of a lady

named Lavinia Janetta Ryves, who claimed to be a member of the Royal Family.

The story which she brought forward was originally invented towards the close of the Regency, and disseminated after the accession of George IV. to the throne, through some of Queen Caroline's partisans. More than one pamphlet was written for that purpose; one of them by Lady Anne Hamilton, sister of the tenth Duke of Hamilton, and lady of the bed-chamber to Queen Caroline when Princess of Wales, under the title of *A Secret History of the Court of England.* Beckford, the author of *Vathek* (whose daughter married the Duke, Lady Anne Hamilton's brother), was among the few persons of consideration who gave credit to and aided in the circulation of that story; which affected the reputation, not of other persons only, but of George III. himself: and the scandals, so circulated, ultimately found their way into a work[1] professing to be historical, which was published in the year 1867 after the trial of Mrs. Ryves's case, —of which trial (strange to say) the author, Mr. Jesse, seems to have been ignorant,—at all events, he took no notice of it. The facts deserve commemoration; there are few things more curious in the history of imposture.

Mrs. Ryves's action was brought under a modern Act of Parliament,[2] which enabled any natural-born British subject to apply to the Divorce Court for a decree declaring the validity of the marriage of his

[1] Jesse's *Memoirs of the Life and Reign of George III.*

[2] 21 & 22 Vict. cap. 93.

parents or grandparents;—making such a decree, except in case of fraud or collusion, binding, not on private persons only, but on the Crown. The Act required the Attorney-General to be made a party to all proceedings under it: and to this action I was, in that character, defendant. What Mrs. Ryves asked was, that her grandmother might be declared to have been lawfully married to Henry Frederick, Duke of Cumberland, brother of King George III.; and that her mother, who in 1789 or 1790 married a painter named Domenic Serres, was the legitimate daughter of that marriage. Of her own legitimacy, as the daughter of Domenic Serres and his wife, she had already obtained a declaration in another suit. The action was tried before a special jury and three judges,—Chief-Justice Cockburn, Chief Baron Pollock, and Sir James Wilde, afterwards Lord Penzance. The trial occupied many days, beginning on the 1st and ending on the 13th June 1866.

In support of the case set up, a large number of documents were produced. But it was not pretended that either Mrs. Serres or Mrs. Ryves ever saw or heard of those documents, or knew or heard anything about any of the supposed facts which they were brought forward to prove, before 1815. Down to that time, Mrs. Serres believed herself to be (as she no doubt was) the daughter of one Robert Wilmot, who had lived at Warwick, and Anna Maria his wife. She was baptized as their child in April 1772, very soon after her birth, in the parish church of St. Nicholas, Warwick, and was brought up by them

from her infancy, as their child. A brother of that Robert Wilmot was a clergyman, James Wilmot, who down to 1781 (when he was fifty-five years old) was a Fellow of Trinity College, Oxford, and became in due course a doctor of divinity. If he had not been a bachelor he could not have remained a Fellow of his college, or have obtained the college living of Barton-on-the-Heath, in Warwickshire, to which he was presented in 1781, and which he retained till his death in 1807. Mrs. Serres herself published an account of him in 1813: her first public adventure (as far as I know) in fiction. He was, according to that account, the author of the letters of Junius: he was also her uncle, and a bachelor till his death.

"Olive" was the name by which Robert Wilmot's daughter was baptized. Her husband, Domenic Serres, was marine painter to King George III., and one of the original members of the Royal Academy:—she herself, after her marriage, obtained the appointment of landscape painter to George, Prince of Wales. In 1803, after the birth of her daughter (Mrs. Ryves) she separated from her husband; and, being at Brighton in 1805, where the Prince of Wales was living, she did what she could to pay court to him, and to obtain notice from him and other members of the Royal Family. Some letters written by her in 1809 to the Prince of Wales, which were produced for the Crown at the trial, contained passages which (if the writer was of sound mind), could hardly be interpreted except as making advances to His Royal

Highness of a tender character. In 1813 she published the book already mentioned, describing herself in it as Dr. James Wilmot's niece.

The case set up at the trial was, that in May or June 1815, George Greville, the second Earl of Warwick of that family, came to Mrs. Serres, accompanied by the Duke of Kent,[1] and told her that she was the legitimate daughter of Henry Frederick, Duke of Cumberland, and that Lord Warwick had been from the first the depositary of that secret: and that he then delivered to her three packets of documents, containing proofs of that statement, and of other things more extraordinary still, which (he said) had been, down to that time, in his custody at Warwick Castle. One of these he had received from Dr. James Wilmot; another from the great Earl of Chatham; for the third he was himself responsible. Not only the Duke of Kent, but also the Dukes of Clarence and Sussex were vouched by Mrs. Ryves as having at different times examined these papers, and acknowledged their authenticity. Lord Warwick died on the 2nd May 1816; and, on the next day, the Duke of Kent was alleged to have signed a paper in these words:—"Protection to my cousin Olive, provided she keeps secret all the papers connected with my Royal Father's f—t m——ge, and her own legitimacy, during his reign. May 3rd, 1816.—

[1] In Mr. Nugent Bell's Petition, the statement as to the Duke of Kent was, that Mrs. Serres, after receiving the papers from Lord Warwick, communicated them to His Royal Highness, and was induced by him to believe that the Royal Marriage Act "made her illegitimate."

EDWARD." Notwithstanding this, Mrs. Serres induced a clergyman named Groves, curate of a church in Westminster, to draw up for her in the following year, 1817, a memorial countersigned by herself, for presentation to the Prince Regent, in which the story told was different from that afterwards invented; as the tale about Lord Warwick and the Duke of Kent, and Lord Warwick's pretended packets of documents, evidently must have been. For Mr. Groves, in that memorial, stated that Mrs. Serres had "imparted to him the history of her birth, and had shown him the attestations of it"; proving her "to be the daughter of the Duke of Cumberland by Mrs. Payne, sister of Dr. Wilmot, and wife of a Captain Payne, R.N., who was abroad at the time of their becoming acquainted, and who never lived to return to his native country"; and adding that she (the daughter) "was born at Warwick Castle, and did not discover these facts till after the death of the Earl of Warwick." Letters were also written in the same year, 1817, by Mrs. Serres herself, referring to that memorial, and speaking of herself as the Duke of Cumberland's "natural daughter"; of her mother as a sister of Dr. Wilmot; and of Dr. Wilmot as her uncle.

It was after Queen Caroline's arrival in England that Mrs. Serres assumed the style of "Princess Olive of Cumberland," and claimed to be the Duke of Cumberland's legitimate daughter. At the beginning of 1821 she put herself into the hands of an Irishman named Nugent Bell, a "genealogical lawyer,"

and he drew up for her another memorial, in the form of a petition to King George IV., telling another story, more like that told at the trial than the first, though with some variations. This was sent to the Home Office, with a letter from Mr. Bell (dated 27th January 1821), in which he said he "had seen papers of vital importance to the Royal Family, in the possession of Olive, Princess of Cumberland, and had reason to believe that, unless she was acknowledged by His Majesty within a few hours, those papers would be handed to the advisers of Queen Caroline; whereby, in his judgment, a Revolution might be brought about." Another letter followed (dated 30th January) in which it was added, that the papers showed the marriage of George III. to Hannah Lightfoot, and his remarriage by Dr. Moore [1] to Queen Charlotte in January 1765, after Hannah's death; "this being certified to be correct by Lord Chatham and Dunning"; and that he (Mr. Bell) had also seen a paper signed by George III., declaring Prince William, Duke of Clarence, his first legitimate son; and another paper, to the same effect, signed by Lord Chatham and Dunning, and also by James Wilmot.[2]

It was after this that the publications referred to in Mr. Jesse's *Memoirs of the Life and Reign of George III.* appeared. Mrs. Serres,—herself, no doubt, the fabricator of every document produced in

[1] Archbishop of Canterbury from 1783 to 1805.

[2] At the trial, the papers so referred to by Mr. Bell were not produced.

support of her pretensions,—may have been disordered in mind. Many people, certainly, have been so treated on less evidence. She wrote, in 1818, to the third Lord Warwick, telling him that she had seen his father's ghost. She addressed a manifesto to the Polish nation on the 5th of September 1821, stating that her legitimacy as Duchess of Cumberland had been legally established in England, and that she had just discovered her descent from Stanislaus, king of Poland; and begging her "beloved people" to invite her to assume the throne of that kingdom. She also declared that in the same month she was re-baptized in Islington Church, as Princess of Cumberland!

To this account of the history and growth of the imposture, it should be added that after the present Queen's Accession Mrs. Ryves composed and published a pamphlet called *An Appeal for Royalty*, in which were some things which she did not produce at the trial; and that in 1844-45 a committee was formed, and money subscribed, to support her claim. She found, in 1866, a gentleman of the Bar ready to undertake her case, with the full measure of credulity which it required. In his opening speech he said, that about seventy documents would be produced, containing forty-three signatures of Dr. Wilmot, sixteen of Lord Chatham, twelve of Dunning, twelve of George III., thirty-two of Lord Warwick, and eighteen of the Duke of Kent,—at which "no one could look without being convinced of their genuineness."

The documents, when produced, made upon the minds of all others who saw them at the trial (unless

Mrs. Ryves herself may have been educated by her mother into a belief in them) a contrary impression. With the exception of one or two fly-leaves torn out of books, in which successive entries had been written, they were all upon shabby little scraps of paper, about the size of a half-sheet of the notepaper generally in use, and without a water-mark upon any of them. Some signatures had been imitated, probably from a collection of autographs: others bore no resemblance to the real handwriting of the persons to whom the titles or names belonged.

It is needless to add that no attempt was made to corroborate, by evidence of extrinsic facts (other than the alleged conversations of Lord Warwick and the Princes of the Royal Family with Mrs. Serres), any part of this series of documents. That they were fabricated by Mrs. Serres's own hand was proved by the peculiar mis-spelling of "*orfspring*" for offspring, which occurred in the pretended will of Hannah Lightfoot, and in a solemn declaration, purporting to be signed by the two Wilmots, Lord Chatham, and Dunning, that Mrs. Serres was the legitimate "*orfspring*" of the Duke of Cumberland. Mrs. Serres's correspondence with the Prince Regent, as well as the Memorials and letters of Mr. Groves and Mr. Nugent Bell, and other genuine papers connected with the claim as originally made, were preserved in the Home Office. I put into Mrs. Ryves's hands, in cross-examination, two letters of Mrs. Serres, which she admitted to be in her mother's writing, in both of which was the same spelling, "*orfspring.*" And in a third,

addressed to the Prince Regent on his fiftieth birthday (12th August 1812), there were some complimentary verses. One couplet was—

> Hail, happy hour! *orfspring* of Heaven's smile,
> The great and mighty succour of this isle.

The jury interrupted me, saying that they had heard enough, before I had gone far in my address to them for the Crown. Mrs. Ryves's counsel claimed, and was allowed to reply. When he had done, the foreman said that the jury were all of opinion that there was no necessity to hear further evidence, as they were convinced that the signatures to the documents were not genuine. The Chief Justice observed: "You share the opinion which I and my learned brothers have for a long time entertained, that every one of the documents is spurious." Earlier in the trial, the Judges had indicated that opinion as to the papers relating to the pretended marriage of George III. to Hannah Lightfoot. "Rubbishy pieces of paper — gross and rank forgeries," said Sir Alexander Cockburn, with Sir Frederick Pollock's assent. "Nothing more or less than very foolish forgeries," said Sir James Wilde. The verdict, of course, was for the Crown, and the forged documents were impounded in Court.

We spent the long vacation of 1866 chiefly at Blackmoor, but partly at Mixbury, and in making visits; among others to Lord Wensleydale at Ampt-

hill and to Mr. Hastings Russell (afterwards Duke of Bedford) at Woburn Abbey.

Lord Wensleydale, as Baron Parke, had for several years ruled the Court of Exchequer; and during his reign technicalities had so much prevailed there as to give occasion to a squib by Serjeant Hayes, the wittiest man at the Bar (afterwards a Judge), in which the Baron was represented as discoursing in Hades on some of the driest points of special pleading with ancient black-letter sages, and victims of the law. Afterwards, in 1856, it was his fortune to raise, in his own person, a capital point of constitutional law, which perhaps might not have been brought into question at all, but for the accident of his having a sharp fit of gout when he ought, in the ordinary course, to have taken the oaths and his seat in the House of Lords at the beginning of the Session; for his patent, as a Life Peer, had passed the Law Officers and the Heralds' College without objection. His claim to sit under that patent having been disallowed (though all such authority as was to be found in the Law-books was in its favour) he accepted another, granting him a hereditary peerage; and his unquestionable learning added much, for many years, to the judicial strength of the House of Lords. He was a good scholar, a very estimable and altogether prosperous man, popular in society beyond most lawyers. Lady Wensleydale had known some of my Yorkshire relations from her youth, and she and her husband were very friendly to us.

To Lord Wensleydale: On a Visit to Ampthill.

O world, O life, O time,
On whose last steps I climb,
Trembling at that where I had stood before;
When will return the glory of your prime?
No more,—O never more! Shelley.

He who would know the joys of human life
Must bear its sorrows with a patient will;
For Liberty's true votaries are still
The children of obedience, not of strife.
Youth may steal charms from childhood, yet fulfil
Its own sweet promise:—Manhood must not choose,
Narcissus-like, to watch youth's fading hues,
But press right onward; and the steepest hill
Will often sunshine yield, and often flowers.
And when calm age with gradual hand shall spread
Its honoured snows upon the reverend head,
The man whose strength was spent in service due,
To each succeeding call of duty true,
Not idly dreaming through the precious hours,
May, Wensleydale, like thee his youth renew.

R. P. *1866.*

On the day of our arrival at Ampthill (the 11th of September), there appeared a "leader" in the *Pall Mall Gazette* headed with my name. This, as a sort of hospitable salutation, Lord Wensleydale placed in my hands; expecting, no doubt, that I should derive unqualified pleasure from it. Upon the surface the colours were smooth enough; but I doubt whether the general intention was to flatter my self-esteem—certainly it had not that effect!

I was described as "probably the most urbane member of the House of Commons"; and as one of

the speakers to whom it most willingly listened; with a great many other complimentary words — all, however, leading to the point that I had not the sort of power necessary to make a great orator, who ought to "live in an atmosphere of intellectual sympathy with his audience," and to "have at the bottom something which could control as well as yield." There was in me "nothing of the overbearing faculty," which had "so often been the secret of the great lawyers'—and even of the great Chancery lawyers'—strength"; and was "at least one of the accessory powers of the ablest of our recent law lords, Lord Westbury." I was, "perhaps, the only great lawyer and politician who had climbed so high without knocking anybody down." As a politician, I was "one of the most characteristic of the Peelites"; and I "had that other curious note of a Peelite, which Sir Robert Peel and Sir James Graham had not, but which yet seemed to belong to the genius of the party—Puseyite leanings. . . . The cautious stand taken on existing institutions, the reverence for authority as long as authority did not claim any reactionary or revolutionary change of moral attitude, the love of a tenable half-way house between the voice of antiquity and the claims of to-day, the tendency to test truth not by its springs but by its issues, not by its principle but by its results—were all marked criteria of the Peelite Liberal-Conservative creed, were all marked criteria of the Puseyite party in the Church"; and were, also, all characteristic of myself. I had always been liberal on all questions of

"so-called toleration," and as to the extension of political privileges; laying down inclusion as the rule, and exclusion as not to be justified without obvious and satisfactory reasons. My speech in favour of the admission of the Jews to Parliament in 1848, and my recent declaration in favour of household suffrage, were referred to. The Peelites, it was said, had "a marked tendency, on occasions when pressed by an importunate politician to go with him one mile, to go with him twain"; and this was ascribed partly "to their habit of looking at all political principles as they would at economical principles, in their results." They asked themselves, "Where will this end? Where can we safely stop? Where is there a clear ledge which will prevent us from slipping further?" instead of, "What is the true ideal of a representative assembly, and by what changes can we bring the House of Commons nearest to that ideal?" "Sir Robert Peel was the first great statesman who taught people to look at political changes as a sort of 'manifest destiny,' which politicians should accept, rather than control; and his special followers had never thrown off the habit." Yet, "though Liberal from the beginning on all questions on which an unprivileged minority sought for admission to the rights of a privileged majority," I had always been "the most conservative of Conservatives on questions of ecclesiastical morals, such as changes in the marriage law." My speech of 1855 against the Wife's Sister Bill was quoted; and it was inferred that I thought "law, at all events on questions

of great moral delicacy, should be its own reason, and be obeyed without questioning, like the *dicta* of the Church." On war questions, I "verged, like Mr. Gladstone, towards the principles of the peace party"; I "had joined decisively the party for peace in the Crimean crisis of 1855"—arguing for it, however, more mildly, and with a more "persuasive serenity," than Mr. Gladstone, "who *disputed* for peace with the true animus of a combatant." On the whole, my critic "could scarcely assign me the highest political rank." I had "shown little sign of creative power." I had been "an expositor and a critic as a politician, rather than a statesman." My mind was "subtle and lucid, rather than commanding and original." I was fond of hymns and hymnology, had published the *Book of Praise*, had been "too generous to pious and cheery little crickets like Dr. Watts," and was going to deliver a lecture on hymnology at the York Church Congress. "There was something characteristic about this": with more to the same effect.

The paper was ably written; and the critic (I never inquired, and do not know, who he was) was not a man to be despised. The most weighty of the compliments which he paid me was, that he should have devoted to me so much space, and have paid so much attention to my sayings and doings. Without accepting all that he said of my principles and opinions, there was, in at least part of it, some truth; and, beyond that, I was not the best judge of what related to myself. Where he was least sympathetic, he was not unfair; and, if it be (according to the

well-known lines) a good thing "to see ourselves as others see us," I had that compensation for being, in my political character, dissected in public.

At Woburn Abbey I met Lord Russell; and I date from that visit a greater degree of intimacy than I had before enjoyed with him. He had, indeed, honoured me, while he was at the Foreign Office, with as much of his confidence as I could reasonably expect or desire; but official confidence is a different thing from private intercourse; and he was not by nature demonstrative, or always easily accessible. He was a man with considerable inequalities in his character; which was in many respects, but not throughout and uniformly, great. As unlike Gladstone in manner and general habit of mind as it was possible to be (for he was naturally shy, sensitive, and self-contained, and in conversation pithy and pointed, rather than copious), he was in some other points like him—very much under the government of popular impulses; prone to sudden and unexpected movements and stratagems in politics; and not proof against the craving for power. To serve under him was easy, for he was just and generous to his followers; but it was difficult for him, after he had once been leader, to serve under others—a difficulty which (though in the Cabinet) he never overcame during the administration of Lord Aberdeen, nor until the second administration of Lord Palmerston. In him, of all the leading statesmen of my time, the power of the old Whig traditions, especially the Whig jealousy of the Church, was

strongest. Upon those subjects I was never in accord with him: but he extended his liberality of feeling, which was very genuine—not, I think, without some degree of personal sympathy—to those from whom he differed, when he perceived them to be in earnest, and to act consistently upon their convictions. If he felt the influence of the Whig traditions on what seemed to me their worse side, he also represented them worthily in their higher aspect. Small in physique, and weak and unmusical in voice, he was not usually an effective orator. But on great occasions the fire which was within him came out, and he then spoke with a spirit and dignity worthy of his place and name. From the time when he took the Foreign Office in 1859, all restlessness and jealousy of a superior in power seemed to disappear; and the honour of the country was well sustained in his hands. Ambitious as he was, and with the example immediately before him of Lord Palmerston, who had remained at the helm till he was past eighty-one, he had the self-command to apply to himself the maxim that a wise man ought to retire voluntarily before others perceive that he is too old to govern. When I met him at Woburn in September 1866, I neither knew nor expected that he was about to do so. But he was then seventy-four years old; and he had already made up his mind that it must be for Gladstone, and not for himself, to lead the Liberal party to any future victories which it might be destined to achieve; and he acted without wavering on that decision. In the

private intercourse which it was afterwards my privilege to have with him till he died, I found him high-minded, kindly, and considerate; free from the impatience and irritability of age; and willing to communicate the information concerning men and things which he had accumulated in the course of his long life; and I recall with pleasure more than one visit which he paid to me at Blackmoor.

The interval between the session of 1866 and that of the following year was marked by changes in the higher offices of the Law. Sir James Knight Bruce,[1] who had been my constant friend from the beginning of my practice, and of whose splendid powers and generous character I was a great admirer, died early in November: and, to the surprise of myself and most others, his place, as Lord Justice, was accepted by Sir Hugh Cairns, who was then made a peer: Rolt succeeding him as Attorney-General. There had been (as Rolt told me) an arrangement that these appointments should be made upon the earliest opportunity. Cairns was not a man of strong health; it was feared he might break down under the combined strain, for any long time, of the work of Attorney-General and his great private practice. He had every qualification necessary for a great Judge; and in the House of Lords he was capable of taking a part equal to that formerly taken by Lord Lyndhurst. In the meantime, he was necessary to his party as Attorney-General; and the Solicitor-General could not at the same time be chosen from

[1] See Part I. of my *Memorials*, vol. i. p. 375.

the Equity Bar, to which Rolt belonged. But Rolt's claims upon the Conservative party, as well as his position at the Bar, were second to those of Cairns alone; and Sir William Bovill was content to accept the place of Solicitor-General, upon the understanding that, when the opportunity arose, Rolt would take the higher place over his head.

At the end of Michaelmas Term in that year, Sir William Erle retired from the Chief Justiceship of the Common Pleas; Sir William Bovill succeeded him; and John Karslake was made Solicitor-General. I was among those who attended, on the 26th of November, to do honour to Sir William Erle on his taking leave of the Bar, when Rolt, as Attorney-General, performed the duty which would have fallen to my lot if the occasion had occurred a few months earlier.

On the 9th of July 1867 Lord Justice Turner died. He was succeeded by Sir John Rolt, Karslake becoming Attorney, and Charles Selwyn, Solicitor-General. There were still some Judges left—Lord Romilly, Sir John Stuart, and Sir William Page Wood—who represented the middle period between my own generation and that under which I learnt the business of my profession. But the deaths, in this and the preceding year, of Sir James Knight-Bruce and Sir George Turner (of whom the one had sat on the Bench for twenty-six, and the other for seventeen years), and the succession to their places of Cairns, my junior, and Rolt, my contemporary, marked to me, more emphatically than any other events,

the end of the old time, and the beginning of a new.

Sir George Turner filled a large space in my affection and esteem; and, on his part, he extended his regard to our children as well as ourselves. He sat with me during one Parliament, as member for Coventry; but had no time for any display of his powers there, before he was transferred to the seat of Justice, his proper sphere. Excellent in all ways, he was a first-rate Judge; patient, painstaking, and accurate. From the day that I first knew him, he had the outward signs of a weakly constitution; his well-formed expressive features were pallid and bloodless; his voice thin and husky; and he told me that his life was not thought well of by Insurance Companies. Yet he worked at the Bar, and on the Bench, with unwearied activity; never undertaking a case of which he did not make himself master, and, as a Judge, sparing himself no trouble. He had a calm mind, a cheerful spirit, unruffled temper, and a very lucid intellect. Take him for all in all, there has not been upon the Bench in my time a man of finer judicial qualities, or with fewer drawbacks upon them. Notwithstanding his seeming weakness, he was never prevented by ill-health from the punctual performance of his duties; and he lived to a good, though not to a great, age.

I took my part, out of office, in law reforms, which experience had taught me to desire. I was a member, in 1867 and 1868, of Royal Commissions on the Neutrality Laws and Naturalisation, on which

legislation, in accordance with the Reports of the Commissioners, took place under Gladstone's first Administration. On another very important subject, the Marriage Laws of the United Kingdom, a Commission had been appointed at my instance, while I was Attorney-General; the Report of which was drawn up by me at the end of 1867. There were differences, not creditable to our jurisprudence, between the laws of England, Scotland, and Ireland, upon this subject: and in Scotland particularly, the permission (though discouraged by both Church and State) of "irregular" marriages, by private interchange of consent, or cohabitation after promise, without any publicity or solemnity civil or religious, had given occasion to very great, if not numerous scandals. Cases were from time to time brought from that country to the Bar of the House of Lords, and were also sometimes decided in our own matrimonial Courts, in which the succession to titles and estates, and the domestic and civil status of families, depended upon doubtful and difficult questions of intention and fact, arising out of that state of the law. The Commissioners recommended that the marriage laws of all parts of the United Kingdom should, as to the conditions necessary for a lawful marriage, be made uniform, without altering anywhere the consequences of a marriage duly solemnised;—and they proposed that all ministers of religion, officiating regularly in any churches or registered places of worship, should be invested with the character of civil registrars; so as to encourage as far as

possible, impartially as between different Churches and denominations, the union of the religious with the civil sanction of marriage. Nothing, however, was done, or attempted to be done, in consequence of those recommendations.[1] The attachment of some Scotchmen to even the most questionable things in their peculiar institutions, and the jealousies and susceptibilities of some religious bodies, stood in the way of that general acceptance, without which it would have been difficult for any Government to deal with a subject of such great social moment, lying outside the range of ordinary politics.

Having succeeded, when Attorney-General, in carrying through the House of Commons the Acts for the concentration of the Courts of Law and Equity, I took up the kindred subject of the unnecessary and inconvenient division of Courts and jurisdictions in our system of Judicature, and the delays and circuities in the administration of justice, and other practical evils, of which it was the cause—bringing it generally under review, by a motion in the House of Commons for a Commission of inquiry, on the 22nd of February 1867. The Commission for which I asked was granted; I was a member of it, as were most of the leading lawyers of the day. It made several reports; the first, on which the main provisions of the Judicature Act of 1873 were founded, on the 25th of May 1869. In its principal recom-

[1] I called the attention of the House of Commons to them on the 6th August 1869; and they were on more than one occasion the subject of observations in the House of Lords, but without result.

mendations, the Commissioners, who devoted to it all the care and attention required by so great a matter, were generally agreed; and my satisfaction, in looking back upon my own share in initiating and bringing to completion that necessary reform, is not the less, when I think of the part taken in it by others,[1] without whose help it could not have been accomplished.

Another object connected with my profession, which I had also much at heart, was the establishment—I ought rather to say, restoration—of a General School of Law in London, on a scale worthy of the importance of the law, and of the resources of the Inns of Court. Those Societies were founded in the Middle Ages for public ends. In Sir John Fortescue's[2] treatise on "the praises of the law of England," written in Henry VI.'s time for the instruction of Edward, Prince of Wales, they were described as a flourishing Legal University. They conferred the degree (so it was anciently regarded) of "Utter Barrister," which gave to the advocates called to it an exclusive right of audience and practice before the Judges of the Superior Courts. Though not incorporated, they were exempt, as to their internal affairs, from the ordinary jurisdictions of the realm, being placed, like Colleges in the Universities, under a special visitatorial power, vested in the whole body of Judges. Queen Elizabeth made Orders in Council,

[1] Particularly Lord Hatherley and Lord Cairns, Sir W. M. James, and Mr. John Hollams.

[2] He was Chief Justice of the Queen's Bench, and Lord Chancellor.

regulating the internal administration of some of them; and some of the property of the two Temples was granted by James I. expressly for the advancement of Legal Education. A Royal Commission had inquired into their revenues, constitution, and government; and had recommended, not indeed Parliamentary interference with them, but changes within their own power, tending to restore their earlier character. The Benchers of Lincoln's Inn, upon the motion of Sir Hugh Cairns, had passed a resolution, favourable to the principle of that recommendation. All those Societies had of late been doing something for the better education of their own students; not enough to approach to my idea of what ought to be done; but enough to encourage me to hope for their co-operation, if I could succeed in exciting a general interest in the subject.

This was the state of things, when, in 1867, I set on foot an Association for the Improvement of Legal Education, of which the first meeting was held on the 6th of November in that year. The movement promised well for success: it was welcomed by eminent members of both branches of the legal profession —among others, by the veteran Lord St. Leonards. It seemed to be largely felt, that the existing methods of preparation for the practice of the law were too loose and empirical, that our text-books were too generally mere digests of reported cases, and that it would be a great benefit if a more liberal and scientific spirit could be infused, by a well-directed study of general, historical, and comparative juris-

prudence. What was done in Germany, and elsewhere upon the Continent, might be done with as much advantage here. Our Universities did, in that particular direction, much less than they do now; but, however largely their schools of law might be improved and extended, the numbers of law students resorting to London without passing through them would always be great. Of those who were admitted members of the Inns of Court, and went through the course necessary to be called to the Bar, many did not follow the law as a profession; some took to commerce; some became country magistrates; some members of Parliament; some civil servants of the State. To all these, a groundwork of such knowledge as might be acquired in a good metropolitan School of Law would be of great use. A principle to which I adhered under all discouragements was, that the school should be open to those who were preparing themselves for either branch of the legal profession, so as to enable them, without any unnecessary distinction or exclusion, to attend those classes and lectures which might be useful to all, and to compete together for honours and certificates of merit; and that those also of the general public, who might wish to be instructed in law and its principles without intending to follow it as a profession, might be admitted on equal terms.

The solicitors generally, metropolitan and provincial, gave this movement a consistent and intelligent support. It was kept up for ten years or more, with greater or less energy. I introduced into the House

of Commons in July 1871, and again in the following year, Resolutions affirming its principle, and proposing that the Crown should be addressed to grant a Charter to a General School of Law; but I failed, by small majorities, receiving no support from the Government of the day. I introduced also into the House of Lords,[1] while Lord Cairns presided there (he was favourable[2] to the principle, though cautious as to pressing it), a Bill for the same purpose, and another contemplating changes in the government and constitution of the Inns of Court, after the precedent of what had been done in the Universities. But I had not strength enough behind me to carry any of those proposals. They excited but a languid interest in the press and the general public; and the profession was divided about them. It was indispensable for their success that they should be supported by the Bar, as well as by solicitors. The hope of obtaining that support, with which I began, was disappointed; many of those among the more prominent members of the Bar who had at first looked with favour on the movement gradually fell off.

Three causes contributed to this result: jealousy

[1] 5th May 1875.

[2] Writing to me on the 11th October 1872, upon my elevation to the Chancellorship, he said, there were two subjects on which he had suggestions to make to me. "The first is legal education.—If you touch this, I hope you may feel yourself able to deal with the Inns of Court, to make the governing bodies really representative, and to roll them all into a legal University. The public rights and privileges which they enjoy are amply sufficient to justify public interference and control."

on the part of the University of London, which had a law-school of its own, in which several men eminent at the Bar had graduated; the inert and suspicious conservatism of the Inns of Court; and a strong prejudice against bringing together, under one system of education, future barristers and future solicitors. Of these, the first cause deprived me of the support of Lowe, then member for the University of London, who at the beginning of the movement had been one of its well-wishers. It also, I have no doubt, contributed to make Jessel, when Solicitor-General in 1871, my vigorous and effective opponent. The Inns of Court passed from an attitude of hesitation, in which some of them were more, and others less, favourable, into one of opposition, from the fear that they might lose their independence and the control over their own funds. It was of the essence of the scheme, that they and the Incorporated Law Society should co-operate in it: the use, for at least some time, of buildings belonging to them, and contributions from their funds, would be necessary; it was not expected that, either by donations from other sources, or by means of students' fees, the new School of Law could be made from the first self-supporting; nor would it have been desirable, if practicable, that it should be established apart and without aid from those Institutions. It was not, however, proposed to place the new school, either wholly or in part, under the control of any of them; all were to be proportionately represented upon one Governing Body. In the existing government of the

Inns of Court, there was the spirit of private clubs, more than public bodies. It was not in the hands of the most busy and active members of the Bar; they might from time to time succeed or be elected to the principal offices; but they were too much occupied to devote to the business of those societies any large share of their thoughts or time. The dominant influence was that of the men who were always there, most of whom had little business of their own, or had survived such business as they once had, or had leisure for at least great part of the year. Among such men, habit and *esprit de corps* is generally stronger than zeal for reform. It was said by Lord Westbury,[1] that the strongest of all a man's attachments was to his Inn of Court. Whether this was irony, or satire, or mere paradox, I do not know; perhaps, as to those men who were never absent from the dining-hall or the council-chamber of their Inn, it may have been no more than a fantastic exaggeration of the truth. All those men were against my plan of legal education.

The prejudice against bringing future barristers and future solicitors into contact with each other, under a common system of preliminary instruction, also told forcibly—I am not sure whether it was not the most potent of the adverse influences with which I had to contend. I regarded it as a prejudice, neither liberal nor reasonable. Nothing, I thought, could be said for it, either from a public or from a social point

[1] In evidence which he gave before the Royal Commission on those societies.

of view. No man could estimate more highly than I did the public interest in the character of the Bar. But in all that could tend to furnish the minds and elevate the character of the larger, the more numerous and generally diffused class, in whom a closer, more constant, and more habitual confidence must necessarily be reposed, as to private affairs, by men of all orders in all parts of the country, the public interest was at least equally great. From a social point of view, to treat barristers as if they ought to belong to a different caste from solicitors, whose sons, brothers, or sons-in-law many of the most successful and honourable among them were, would be simply absurd.

What gave power to this prejudice was the idea that such a common education might tend towards a fusion of the two branches of the profession. But there was no real reason why it should have such a tendency, as long as the habits of men, the arrangements of families, the variety of personal gifts, aptitudes, and opportunities, and the general sense of public convenience, operated in favour of the existing distinction; and, if ever those motives should cease to operate, the distinction could not be preserved, wherever men of either class might receive their education. Another notion may have come in aid of this—that the future barrister, meeting the future solicitor in the lecture or class room, might be tempted to use those opportunities of intercourse to establish for himself a connection, against the time when both might be engaged in business. But, if there were any such

calculating and long-sighted spirits, differing so widely from the general disposition of youth, the ordinary conditions and common interests of society would afford better opportunities than the class-room of a public institution, for ingratiating themselves with those who might be useful to them in life.

Under the weight of these adverse influences, and for want of that external support which in this country is necessary for reforms of all kinds, the movement in which I was so much interested collapsed,—to be revived, perhaps, hereafter, under better auspices, and in some more perfect form. It was, doubtless, enough for one man to accomplish as much as I was permitted to do, for those other projects of Law Reform, in which I was more successful—the Concentration of the Courts, and the Reconstruction of the Judicature.

CHAPTER III

REFORM BILL AND ROBERT LOWE, 1866—OUT OF OFFICE—RESIGNATION OF LORD RUSSELL—REFORM BILL OF 1867.

During the session of 1866, the last year of my time as Law Officer, the House of Commons was chiefly occupied with the Reform Bill, brought in by Mr. Gladstone on the 13th of March. Then, for the first time since 1832, the question of Parliamentary Reform became a reality, and took the foremost place in practical politics. The proposed extension of the franchise, from £10 to £7 rental, was resisted in every stage, not by Conservatives only, but also by those Liberals whom Bright called "Adullamites"; a small but intellectually important section, of whom Lowe and Horsman were the leaders. The Government succeeded in repelling every assault by sufficient (though not large) majorities, till the Bill was in Committee; but in that stage, on the 18th of June, Lord Dunkellin carried, by a majority of eleven, an amendment in favour of rateable value, instead of net rental, as the basis of the new suffrage. On the next

day the Government resigned; giving place to Lord Derby's third Administration.

Of my own part in the discussions, both on the Government measure and upon another Bill dealing with the same subject, which was introduced by Mr. Clay, member for Hull, it will be convenient to speak in connection with the events of 1867. Those debates were well sustained, and remarkable as a display of intellectual power. Gladstone was magnificent; and Bright came out as a great humorist as well as orator. But, of all who took part in them, no one added so much to his reputation as Robert Lowe. He was a decided Liberal in the whole turn of his mind, but at the same time an independent thinker, of the *doctrinaire* school, and by no means an optimist in his views of human nature. His experience in Australia had made him distrustful of an Electorate in which the poorer and less educated part of the community might hold the balance of power; and, sitting for a small Wiltshire borough,[1] which could hardly escape disfranchisement under any scheme of Redistribution, there was nothing to restrain the free expression of his opinion. He delivered against the Bill two speeches, very powerful in rhetoric as well as reasoning, which fairly took the House by storm; the more so because he had never, till then, made any great oratorical effort; nor, indeed, did he make any similar effort afterwards. He was the hero of the moment (it was but a short one) in all Conservative circles. He and I were present, soon after the end of

[1] Calne.

the struggle, at the annual Founder's Commemoration, or "Gaudy," of Magdalen College. He was received with vociferous acclamations in a company which, on all ecclesiastical and most political questions, would have differed widely from him. I, on the contrary, was coldly greeted, as if for the last five years I had been engaged in doing things, which it might be the part of friendship to condone, but not to applaud. My brother William was there; and Frank Faber, in a characteristic letter of the 6th September, referred to his report of what passed—

> He gave us a very amusing account of your and Lowe's appearance at the Gaudy. I would have given a good deal to be present. Lowe seems to have undergone the change that came upon Sir Francis Burdett in his old age; also upon the first Lord Abinger, and the late Lord Normanby; all of whom were very Liberal at one time of their lives. I believe it was the same also with the famous, or infamous, Jack Wilkes. Yet I should fancy that R. L. must retain some of his old sentiments, though upon the subject of a diffused franchise he spoke so very strongly. It seemed to me a grand debate for ability; and might recall the wonderful days of the "wondrous Three," and the "brilliant band of brothers," as Disraeli calls Fox and his associates.

For my own part, I never laid myself out for applause, and was never disappointed when I did not get it. The observation and experience of my life had convinced me, even then, that too much of it is likely to be an impediment to sincerity and independence of thought and action. I was therefore content to be thrown into the shade on that occasion, and silently to admire the triumph of my friend, which was indeed an example of the facility with

which the English mind can move from one extreme to another in its judgments of men.

To the Hon. Arthur Gordon

6 Portland Place, *26th May* 1866.

And now for our own larger rocks and whirlpools here. We do not prosper greatly: and we shall not, I think, long go on as we are: nor am I sure, that for us, a change would not be better. When Lord Palmerston died I was one of those who looked cordially to Lord Russell, as the inevitable successor: nor has anything since happened to make me feel otherwise than cordially towards him. But his want of popularity, and of the power to make himself popular, tells much against him and helps his detractors, who are many; especially as it comes after so very popular a reign as Lord Palmerston's. Very little is seen of him, and I doubt whether, even in the Cabinet, he takes a vigorous or effective lead. Gladstone would have been acknowledged by all to have done very well as a leader in the House of Commons if there had been no Reform Bill: but the responsibility for the management of this Reform Bill (which few think happy) has lowered his prestige; and upon the whole his success is dubious. The changes in the Government, great and small, such as they are, have not added to the power of the Treasury Bench in debate. Childers may perhaps be an exception—he is certainly the best of our recruits: but, on the whole, we are not equally matched with our opponents, and get small help from our friends behind us. In the late debates, Gladstone's reply to Disraeli almost exceeded his own greatest performances. Two new men, Stuart Mill and John Coleridge, spoke very well, on our side, from the independent Benches; but all the rest of the good speaking was the other way.—Ever yours, R. Palmer.

The dissolution of Lord Russell's Administration had results which affected my own parliamentary position in a way not foreseen by me; and if I had

been inclined to set up for myself, and push my own fortunes in a purely political line, I might have found opportunities of doing so without dishonour. It was suggested to me while still in office, early in 1864, that I might so serve the country and that I should aspire to the place of future leader of the Liberal party, which the death of Sir George Lewis seemed to have left vacant. An article had appeared in one of the magazines of the day,[1] giving reasons for the opinion that "Gladstone would not do it"; and it was urged on me that there would be little to choose for a long time to come between a moderate Liberal and a moderate Conservative Government; and that the House was rapidly coming into the French position of two centres and two extremes. Sir George Lewis, it was urged, could and would have led those combined centres; and I was assured that it now lay in my power to do so.

My answer was, that even if I had such an ambition, and could agree as to the possibility of its being fulfilled under favourable circumstances, no such favourable circumstances could be expected to occur to one so heavily weighted in the political race as a practising lawyer must always be; and that I should not feel justified in relinquishing my profession for a purely political life, unless there were some clear and manifest call of public duty upon me to do so. I myself felt entire confidence in Gladstone, and was perfectly content to look to him as our future leader; believing that, when the time

[1] *Fraser's Magazine* (February 1864).

came, he would be found equal in all respects to the demands of the situation.

As long as I felt that confidence, the idea of entering into rivalry with Gladstone (whether otherwise rational or chimerical) was impossible. If I could have seen all that was to come afterwards, the question might perhaps have presented itself differently, and I might have had some inducements to take an independent line, and aim at establishing an independent influence. Arthur Gordon, when in England in 1864 or 1865, told me that some of those with whom he conversed spoke of that position in terms for which he had not been prepared. Even my critic of 1866, mentioned in the last chapter, said what, to one entertaining such an ambition, might not have been practically discouraging. If Sir George Lewis was capable of leading, pugnacity and the gifts of a great orator were not essential. If the pliability as to principles ascribed by that critic to Peelites generally was an objection, I had less of that than Gladstone. The ecclesiastical bias imputed to me, so far as it really existed, would have remained, and might with many Liberals have limited my influence; but I should have been content with such influence as might have been possible within that limit. I did not indeed think that there were in the House of Commons "two centres" ready for combination if a suitable leader could be found. On the Liberal side, the moderation of the moderates, though numerically strong, had seldom been proof against pressure from without in

the interest of party: and on the Conservative side, the "centre" had not to contend with any really powerful extreme. There was no probability that any of those who, besides their actual chief, could look to such a man of the future as Robert Cecil, would come under the influence of any leader from outside. Still, there are in public life many accidents; and Lord Palmerston himself was an example of a man to whom a concurrence or succession of what seemed accidents had brought power, and who, when in power, conciliated to himself much goodwill and practical support, from many even of those formally opposed to him.

Independently of and apart from my feeling towards Gladstone, my political instincts, and the strong practical interest which I felt in public affairs, might have made me willing to take advantage of any "tide in the affairs of men" which might have brought me nearer to "the highest political rank," but for two restraining forces,—the one outward, the other inward. The experience which had established in me the supremacy of conscience, at some cost to what was elastic and imaginative in my original nature, made it impossible for me, like Aristotle's[1]

[1] *Eth.* Lib. iv. 7.—Aristotle adds, "*being worthy.*"—(δοκεῖ δὲ μεγαλόψυχος εἶναι ὁ μεγάλων αὑτὸν ἀξιῶν ἄξιος ὤν). In a diary, privately printed, George Howard, seventh Earl of Carlisle, recorded (under date 2nd January 1857) a conversation with Archbishop Whately of Dublin: who "thought the Irishman more sincere in his want of diffidence than the Englishman. The Englishman wishes you to believe him worth more than he is: the Irishman believes himself to be worth anything."

"magnanimous" man, to "judge myself worthy of great things"; it would not be going too far to say, that it suggested the contrary. This was the inward restraining force. The outward was my profession,—too plainly a real vocation to give way to any other, without some very urgent cause.

As events proceeded, although some things happened which might have seemed to tend in the other direction, the general effect was to confirm me in resisting the allurements of exorbitant personal ambition.

The Reform Act of 1867 was the principal achievement of Lord Derby's third Administration; though it passed in a form very unlike that in which it was introduced. As to its merits, opinions then differed greatly, and differ still. Those who considered that the intelligent and independent portion of the Electorate must be swamped and overpowered by admitting any considerable number of occupiers under £10 value to the franchise in boroughs (which alone was in question), could not but feel that they had been made use of, to be thrown aside when the battle was won. Lowe's heart misgave him, from the moment when the new Ministry was formed. He had hoped to see Lord Stanley at the head of it, in whom he had confidence, and under whom I believe he would have served;—not Lord Stanley's father, who had twice before failed, and whom he regarded as clay in Disraeli's hands. It may be doubted, however, whether, if Lord Stanley had been Premier, he would not have been equally disappointed.

It was not all at once that the new Conservative Reform Bill took definite form. The farce of what, through an indiscreet revelation of Cabinet secrets by Sir John Pakington, obtained the name of the "*Ten Minutes Bill*," had first to be enacted; and the abandonment of that shadow for a measure of household suffrage, — fettered indeed and limited, and mixed with all the old and some other new franchises, — deprived the Ministry of Lord Cranborne, and two other of its leading members. Mr. Disraeli, from the beginning, probably knew his own mind; but his party (as he had the boldness to say afterwards, in a speech at Manchester) required "educating." Lord Derby called it a leap in the dark; and to many persons it seemed, that the traditions of Conservatism were thrown overboard in a manner too rapid to be decent, after what had been said and done in the preceding session. There was much, however, to be said, from a Conservative point of view, for the contrary opinion. It might be granted, that a party which had gained office by rejecting as too democratic the Reform Bill of its opponents, and then brought in another going in some respects further, did not stand on a pinnacle of political morality. But to supplant, by almost any means, opponents when in power, was a course which, though not high-minded, had been too often taken against the Conservatives, to give those who had set the example any right to complain. If substance were regarded, Mr. Disraeli and his friends were as much entitled as anybody else to take advantage of

their tenure of power to settle, if they could, in the way which they thought best, a critical question, which could not remain where it was, and which, if they left it alone, would be made the battle-ground against them. If Mr. Disraeli was at heart Conservative at all, his Conservatism was of an adventurous and not a stationary kind; and Lord Derby began his political life as a reformer, and was no more bound than Lord Russell to finality on this subject. During his second Administration he had attempted to deal with it—unsuccessfully, indeed—but so as to show that the finality of the Reform Act of 1832 was no part of his creed. Mr. Henley, not then a minister, who was a typical Tory of the more intelligent sort, had said during the recess, at a public meeting in his county, that there *must* be a great extension of the franchise. Mr. Gladstone had failed, by fighting on party lines against any important modification of the measure which he brought forward; Lord Derby and Mr. Disraeli did not think the question could be so settled;—"mutual agreement," Lord Derby said, "alone could do it"—and Mr. Disraeli was ready to yield a great deal, rather than forego the opportunity of a settlement.

For my own part (though preferring that constitutional questions should be dealt with at long rather than short intervals, and not forced at any time by factious means into the armoury of party warfare), I regarded this subject as one on which "opportunism" was practical wisdom. I never held the doctrine of "manifest destiny," attributed by my critic of 1866

to Sir Robert Peel: I have always been for following justice and reason against all odds, when I could see that a principle higher than the convenience of time and circumstances was at stake. But the question of adhering to or lowering what Mr. Henley rightly called a "hard and fast line," an arbitrary figure of value, as the basis of the franchise, was certainly not one of principle; it was, at the most, a question of political expediency, with a view to the present state and future good of the nation. If, when a favourable time came, advantage could be taken of it to place an extended suffrage upon some basis of reason, I thought this would be a public benefit; because a suffrage resting upon a reasonable basis was better than one, whether narrower or wider, of which the definition was arbitrary; and would be more likely, according to natural laws, to work for the general good, both by preserving the balance of the political system against future disturbance, and in other ways.

These were the views (and not a disposition to go "two miles instead of one" with importunate politicians, or a mere search for a resting-place from further change), which induced me in 1866 to declare myself in favour of household suffrage. It was on the 30th of May 1866, when Mr. Clay's "Elective Franchise Bill" was before the House of Commons, that Mr. Bright expressed (as he had done before at a meeting of the Liberal party) the same opinion. Rising after him, I referred to what he said in both those speeches—

that he never had been, and did not expect that he ever should be, an advocate either of universal or of manhood suffrage: that he adhered to the ancient principle of household suffrage, already known to the Constitution; and that he expected the ultimate extension of the franchise to go as far as that; but, further than that he did not expect or desire to go.

I added:—

I should be ashamed of myself if, hearing this said by an hon. gentleman who has so often been the subject of attack in this House, I did not in my place here state, that for some years past, since I have been able to give my mind to the consideration of this question, I have held opinions substantially the same. . . . Of course I am now stating my own views, and not the views of those near me: but I do think that the present municipal franchise,—a franchise given to the heads of families inhabiting rated houses,—is the point to which we must ultimately advance, and to which, on Conservative principles, I, for one, should be well pleased to advance now.

I do not think that any one else in the House, except Mr. Bright, spoke in the same sense[1]; and, if my official superiors had blamed me (as perhaps inwardly they did) for insubordination and rashness, I should have had no right to complain. But the vessel of the Government was among the rocks; the matter was important; and the circumstances of the time seemed to me to justify some freedom of speech. On the next day, the Government Bill being under discussion, the Opposition naturally took some notice of what I had said, and I repeated and defended it. As to the fears of Lowe and others, I gave my reasons

[1] James Mozley, writing to Church (afterwards Dean of St. Paul's) on the 9th March 1867, said:—"R. Palmer certainly comes out as a prophet: he first uttered the dreadful word, 'Household Suffrage'; though Dizzy is the first Prime Minister that has." (*Letters*, etc., Rivingtons, 1885, p. 293.)

for not sharing them. I thought it could not be denied that, if a considerable extension of the suffrage might be made safely, it would be a positive good in itself, as tending to increase confidence and sympathy between different classes of the community. So long as the general political balance was not disturbed, a wider seemed, in the nature of things, to be safer than a narrower basis for the institutions which rested upon it. No dangerous sentimentality had as yet become a factor in our politics; and there was nothing with which I could not sympathise in Gladstone's phrase, that the men who were to be admitted to a share of power by the enlargement of the franchise were "our own flesh and blood." I did not understand it to mean that they were, for that reason, to have the franchise; but that, being within the limit (whatever it might be) to which the franchise was extended, the common ties of humanity, moral and material, which bound together the several ranks and degrees of the social system, and united its members by imperceptible links of mutual interdependence and goodwill, might be relied upon to operate generally, and in the long run, in the larger, as they had done in the smaller, Electorate. The position of householder (whatever the value of the occupation), gave every one who held it a definite status, and the stake of one who was or might be the head of a family in the social system. The case was not as if measures of change were brought forward by advocates of revolutionary aims or objects, who might be willing, if they could, to inflame the

passions and pervert the judgment of ignorant men newly admitted to the suffrage, in order to set class against class and produce general confusion. In 1866, as in 1832, the political leaders were trained statesmen, in whose honesty of purpose and desire to lead the people in constitutional ways confidence might be placed. So at least I believed; and at that time, probably, it was true.

These having been my views in 1866, it was impossible that I should be a party, in 1867, to any opposition on the second reading of a Bill, which admitted the principle of household suffrage, though clogged with restrictions and other accompaniments, of which, in a later stage, I might seek to get rid. Gladstone, clinging with characteristic tenacity to his own proposals, and eager to turn out the Ministry which had supplanted him upon the earliest possible opportunity, would have been ready to oppose Disraeli's Bill as a whole, and to join battle upon the simple issue between it and the measure of the preceding year, if he could have overcome the reluctance of his followers to take that course. But, when a meeting was called to take counsel on the situation, it became apparent that this could not be done. The most powerful sections, if not the actual majority, of the Liberal party in the House, thought that, by accepting household suffrage, and using their strength to weed out of the measure whatever interfered with the simplicity of that principle, it was in their power to get the question settled on better lines than those of 1866. Gladstone acquiesced,—I think, not will-

ingly—but there was really no choice. The second reading of the Bill of 1867 was, therefore, agreed to: advantage being taken of the debate upon it to indicate the changes on which the Opposition, generally, was prepared to insist.

One of these, the first in order and not the least important, related to the condition of personal payment of rates by the occupier, by which it was proposed to fetter the new franchise. All were agreed that the occupation should be of a house or tenement separately rated, and that the rates should be paid. But the condition of personal payment by the occupier would have excluded the large class of (what were called) "compound householders," viz. those whose rates, under a law made for reasons of practical convenience, were paid by their landlords; to whom (as for collection) some discount or deduction was allowed. In the debate on the second reading (26th March 1867) I took an active part; devoting myself principally to the examination of this proposal, which I thought founded on a false principle, and objectionable on practical grounds. The rates, when paid for "compound householders" by the landlord, must necessarily be an element in the rent, and would therefore really be paid by the tenant, as much as if the collector received them from his hand. The practical objections were, that a large portion of the newly enfranchised class, the rates on whose tenements were so paid, would be excluded from the suffrage for reasons unconnected with and irrelevant to the principle of the new franchise, and in fact arbitrary;

and that, in this way,—whether the law of "compound householders" were left unchanged, or altered so as to enable the occupier to claim to pay the rates himself,—a disturbing element would be infused into the working of an economical arrangement, which had been made because it was convenient for local taxation and administration, and which had hitherto nothing to do with politics.

There were other parts of the Bill, with the objections to which I dealt in the same speech—particularly the inconsistency, while extending the occupation franchise without reference to rental, of preserving, as distinct franchises to be enjoyed on more favourable terms, those previously in force on the basis of rental,—and granting to some, who could claim under more franchises than one, double votes for the same constituency; so producing inequality of a kind before unknown; which the Solicitor-General, Sir John Karslake, defended only on the ground, that those who had but one vote ought to be satisfied, because "half a loaf was better than no bread."

On the 6th of May the Government surrendered all these points; and the *Times* of the following day paid me the compliment of coupling my name with Gladstone's, as "the twin leaders of the Opposition."

The "fancy franchises"—some educational, some pecuniary — still remained. They were, in fact, ingeniously devised forms of manhood suffrage, conditional on tests of education or property, more

or less arbitrary and "fanciful" in their character, and resting on no clear reason. If accepted, they would have gone far to destroy the value of the household principle as a durable basis of representation. I gave notice of amendments, to omit those clauses; and again, on the 28th of May, the Government surrendered.

Later events caused much of what then happened to be forgotten. I found, as early as 1868, even among my own constituents, some who knew nothing of the part which I had taken. But at the time it did not pass without acknowledgments by the Liberal press; and I confess to having felt some gratification, on reading very lately, in a Liberal paper,[1] this recognition of what I did at that time:—

Sir Roundell Palmer did excellent service to the Liberal cause during the debates on the Reform Bill of 1867. That Bill, as originally introduced by the Conservative Government, was a miserable half-and-half measure, which pretended to give much that it really withheld, and which, when it did give with one hand, took away with the other. It not only would have left the compound householders unenfranchised, but it would have given those whose houses were of the value of £10 a year or upwards two votes instead of one. In the debate on the second reading, Sir Roundell strongly urged the withdrawal of this proposal, on the ground that what was wanted was a good settlement of the question, while the dual vote would furnish new grounds for disagreement and discontent. In Committee he also actively opposed absurd proposals of the Government, that, in the case of the smaller householders, two years' residence should be required instead of one; and that depositors in the Savings Banks and the Funds should possess votes. The consistent and successful opposition of Sir R. Palmer to what

[1] The *Echo*, of 28th May 1889.

was known at the time as the "Fancy Franchise" deserves to be remembered with gratitude.

To the Rev. Frank Faber

12*th June* 1867.

Now for a few words *de republicâ*. When I was at York last autumn, holding forth on Hymnody, I met your friend Canon Trevor, who told me you said I had turned Radical because I advocated household suffrage. That was before the change of Government: when your friends were applauding Bob Lowe to the echo. If you thought me a Radical then, I wonder whom you think Radical now! If your hero, Disraeli, whose wonderful *tours de force* have been more successful than imagination could have conceived, is still Conservative, I hope you will no longer deem me unworthy of that name. If he is not, who is? The party at his back shout as loud for Reform now as ever they shouted against it last year; and what will come next I cannot conceive.

It seems to me that all political distinctions which we have hitherto known are, or shortly will be, broken up; *names* which meant little before will now mean less; and future political combinations will be formed with a freedom of choice, unknown since the interregnum, after Sir Robert Walpole's fall was terminated by Pitt's first ministry. Bright will be as well entitled to the name of Conservative as Disraeli, and Disraeli, if he finds it convenient for his party, will be as able, without public disgrace, and probably as willing as Bright himself could be, to bring forward all or any of the measures which simple people would hitherto have called Radical. It will not surprise me at all, if, after a little time, the practically Conservative *rôle* should be played by the friends with whom I have been acting, and the practically Radical part by the Tories. So strange is the *bouleversement* of this session, and so willing are the more extreme men on the Liberal side to yield to the fascinations of the great actor, whose baits seem to be especially spread for *them*.

Meanwhile, there is one bright spot, which I join with you

in rejoicing at : Claughton's elevation to the Episcopate. One is not, indeed, sure that even such a man as Claughton can, in these difficult times of transition, do much to diminish the perils of the Church ; but he has a rare union of qualities, and *must* do as much good as is possible to be done. And to us it is a source of unmixed delight to have him so near us, as to make our more frequent meeting a matter of practical certainty. Upon Church matters I will not now attempt to enter. I should think you must agree with me in utterly condemning the new spurious race of High Churchmen, to whom "to obey" is *not* better than *Vestments*, nor "to hearken" than *the smell of incense*, etc. etc. In scurrilousness, especially against the Bishops, some of their publications so far exceed anything which the *Record* ever wrote, in its worst days, as to make that paper appear, by comparison, quite unsectarian and charitable. But I must stop at last.—Ever yours affectionately, R. PALMER.

CHAPTER IV

MR. GLADSTONE'S RESOLUTIONS ON THE IRISH CHURCH—RICHMOND AND OXFORD—MR. GLADSTONE'S FIRST MINISTRY—IRISH CHURCH ACT.

1868–1869

During the autumn vacation of 1867 we visited the Cardwells at a place not far from Blackmoor, of which they were for some years tenants,—Easing Park, near Godalming. William Harcourt was also there. It was clear from the conversations we had that the next party move was likely to be an attack upon the Irish Church: and I took pains to make it clear to Cardwell that on that subject I must take my own course, and not follow any leader. He said everything that friendship and party zeal could prompt to persuade me that I ought to go with my friends, but without effect.

So matters stood, when, towards the end of the year, Lord Justice Rolt was suddenly struck down by paralysis, and in January 1868 resigned his office. The public loss was great, and universally felt; for, during the short time that he sat upon the Bench, he

proved himself an excellent Judge, as all men expected him to be. The calamity, which thus prematurely withdrew him from the position for which he was so fit, was doubtless owing to the strain under which, making his way against difficulties, he had worked for many years. At an early age he was thrown upon his own resources, and had to gain his living in a solicitor's office, where he came under the observation of men capable of discerning his merit, and generous enough to help him forward on the road to that eminence which he was destined to achieve. His success at the Bar, when called to it, was very rapid; his character, temper, and ability proved equal to all his opportunities, and gained for him general respect, as well as popularity. He represented, in several Parliaments, one of the divisions of Gloucestershire, in which county he purchased an estate; and, when no longer capable of work, he retired to his house there, accompanied by the regrets and sympathies of all who knew him. There, after a few years of progressive weakness, he died.

The office of Lord Justice, thus unhappily vacant, was offered to me by Lord Derby on the 30th of January 1868. Lord Barrington, his private secretary, wrote for him (he was himself disabled by gout), saying: "As the appointment would be strictly non-political, your acceptance of it would not, in Lord Derby's judgment, form an obstacle to your attainment of still higher office, to which you might naturally aspire, under a Government which commanded your political confidence." I asked to be

allowed a short time for consideration, foreseeing what was so soon afterwards to follow as to the Irish Church, and what were likely to be its consequences to myself: but I found no more than one day necessary. On the 1st of February I wrote, declining the offer, but explaining that I was not actuated by any unwillingness to be indebted to Lord Derby for such a promotion. The post was filled by Charles Selwyn, and Brett (later Lord Esher and Master of the Rolls) became Solicitor-General.

I had then no idea that Lord Derby was approaching the end of his political life. On the 29th of the same month of February he resigned, and Disraeli became Prime Minister. I never knew Lord Derby intimately; but if he had been a more serious politician than after his separation from the Whigs he appeared to be, I might easily have been attracted by him, for he had a high spirit, and at times a very noble bearing. But on the whole, the careless Epicurean element in him prevailed. He was a vigorous and combative speaker, in a style the reverse of Gladstone's; terse, keeping close to the point, and singularly free from metaphor. The description of him as "the Rupert of debate," might have been extended to his whole public character; for he was, like Prince Rupert, dashing and brilliant, but rash and indiscreet; able to gain advantages, but not to use them when gained; commanding men's admiration, but not winning their confidence. When he retired, there was no other change in the Government, except that Disraeli, with too little courtesy towards

Lord Chelmsford, took the opportunity to place the Great Seal in the stronger hands of Lord Cairns. The place of Lord Justice had again to be filled up; it was worthily bestowed upon Sir William Page Wood; Selwyn gracefully waiving his claim to precedence. George Markham Giffard, who had been my schoolfellow at Winchester, was made Vice-Chancellor. Both were good non-political appointments.

Another change, important to the House of Commons, and to myself, took place soon afterwards; when, upon the death of his father, Lord Cranborne (thenceforward Lord Salisbury) was removed to the House of Lords, and ceased to be my neighbour in the country.

Early in March, the form in which Mr. Gladstone intended to move his Resolutions as to the Irish Church became known. I did not doubt the purity of his motives, and I felt the force of some of his reasons; it was my duty to give my best consideration to both sides of the question, when compelled to look it in the face. I took counsel (by letter) with two men standing apart from political warfare, both equally well qualified to form a right estimate of the moral aspect of such a question—Sir William Page Wood and Bishop Selwyn. The Judge agreed with Gladstone; the Bishop "had read his Resolutions with the pain which old friends must feel when their opinions diverge so far as to leave little hope of future reunion." Justice appeared to Sir William Wood to require, and to Bishop Selwyn to forbid

Disestablishment. They agreed that the consistent and logical consequence of disestablishing the Irish Church, because it was not the Church of a majority of the people, would be that the Roman Catholic Church should be established in its stead; and this Sir William Wood would have preferred to do, if it had been possible; but it was impossible, because "England and Scotland would never consent." Bishop Selwyn thought it neither desirable nor possible; not desirable, because the State, "being one," ought (in the absence of any such compact as that made with Scotland) to recognise one form of religion; not possible, because of the limitation of the Crown to Protestants only. "The existence" (he thought) "of the Irish Church was not, and ought not to be, any offence to the Roman Catholic Church; it was what they could not be, and would not if they could";[1] the Roman Catholics, when admitted to Parliament, had sworn not to disturb it. Both men saw the possible results to the Church of England: but the Judge, himself an excellent Churchman, put that consideration aside, on the ground that we must stand or fall on our own merits; while to the Bishop it seemed of vital moment. Speaking in his diocese, about the same time that he wrote to me, he said: "Mr. Gladstone will have my most determined opposition, because I believe that his Resolutions are

[1] My brother William's opinion, from the point of view of an Anglican convert to the Roman Catholic Church, was very much the same. In November 1868 he wrote to Frank Faber: "The Established Church in Ireland is no grievance to the Catholics, except from a sentimental point of view."

but the first of a series which will end in attacking the Church of England.[1]

Besides these friends, and the constant interchange of thoughts with my wife,[2] there were other counsellors on whose affection and faithfulness I could rely. Foremost among them was my brother-in-law the Bishop of Carlisle, who in conversation, and also in a letter of the 26th March 1868, placed before me powerfully his view of the case; doing (as I thought) less than justice to Gladstone, and rather more than justice to the Irish Church. In his forecast of the probable results of the proposed measure in Ireland, he was only too true a prophet.

In my answer, I vindicated the integrity of Mr. Gladstone's motives. "It was the duty of Statesmen, if they could discover and remove them, to remove the causes of chronic discontent in Ireland (which was a standing danger of the greatest magnitude), provided that, in the means which they adopted for that purpose, they violated no higher duty." I was not satisfied that the discontent, which I thought connected in its origin with what was called Protestant ascendency, might not be allayed by the removal of the "one great relic still remaining of the same

[1] Curteis's *Life of Bishop Selwyn*, p. 257. My brother William thought the same. Frank Faber, on the 27th of June 1869, reported to me that he had written to him: "I wish the Roman Catholics at home had kept neutral in this Irish matter. A measure of the same sort will be applied to the English Church also, but on a much larger scale."

[2] My Father said to me, referring to this time, "*then*, as always, your Mother's loyalty to what she thought right was an unfailing support to me."—S. M. P.

political system." As to the principle that, above all things, God ought to be honoured, I agreed with him entirely; but not so entirely as to its application. I did not think, and had never thought, that the maintenance of National "Establishments" of Religion was, in all places and under all circumstances, the necessary or the only way of giving effect to that principle. I could not, therefore, "stand by the Established Church of Ireland *as a principle*"; or seek to form or lead a party on that ground. "I might even think it right to vote with Gladstone, if I were fully satisfied that I ought to act as if the vote concerned Ireland alone."

In saying this I had Establishment, as distinguished from Endowment, in view. Gladstone's Resolutions were so framed as to avoid raising the question of Disendowment — at least on their face. The first and chief of them was: "That it is necessary that the Established Church of Ireland should cease to exist *as an Establishment*, due regard being had to all personal interests, and to all individual rights of property." The second, asking the Queen to place her interest in the Temporalities of the Irish Church at the disposal of Parliament, related to the Crown Patronage of Bishoprics and benefices. Gladstone himself had given me to understand that, so far as his own intention went, Disendowment was not necessarily implied in his Resolutions. I was not long, however, in coming to the conclusion that it was practically impossible so to limit them; and that the scheme, as explained by

the speeches upon it, and as it was and must be popularly understood, did necessarily involve Disendowment. When that point was reached, of which I had from the first an instinctive perception (although I endeavoured to keep my mind open about it), all hesitation was at an end.

On the 3rd of April (the day on which Gladstone carried his preliminary Resolution, that the House should go into Committee on the Acts relating to the Irish Church, by a majority of 330 to 270), I wrote to Cardwell, saying that I should be absent from the division, and had told Gladstone that I proposed the next day to communicate with Lord Zetland, with a view to resigning my seat for Richmond. I did not vote; and I wrote to Lord Zetland accordingly. Gladstone, however, did not wish that I should resign my seat; and my friends at Richmond, after taking a few days to consider, also desired me to retain it. Letters which I received from other friends, among whom Sir William Erle and Sir William Page Wood were prominent, were some compensation for the pain which it cost me to separate myself from those with whom I had so long acted, and to give up (as far as I could then judge, for ever) prospects to which it was not in human nature to be quite indifferent. The wrench, indeed, at the moment, was great; and, as I prayed for strength, the remembrance of my brother William's sacrifice of his whole life for conscience' sake was among the means which, by God's grace, strengthened me. My course of action was appreciated not only

by friends who agreed with me, but by others whose judgment of the matter was different from my own. It was not, however, understood by Cardwell or Gladstone; perhaps the very pains which I took to do justice to their own motives and grounds of action may have made it less intelligible than if I had conceded less to them. They wrote as if they thought me governed by feeling, not judgment; and after the division of the 3rd of April, they were still urgent with me to change my mind. On Gladstone's part neither personal kindness, nor the manifestation of great anxiety to obtain my co-operation, was wanting. He wrote to me on the morning of the 4th April, 4 A.M., that he could not express with what grief he had read my letter, and that he felt it selfish to speak of any other grief by the side of that which he saw I had experienced;—he went on to say, "Great sacrifices and the presence of most kindly feelings towards those who do what you scruple to do, will ever adorn any course you take; and yet surely these are not all which are wanting to adorn human action," and that he could not see how, from my own showing, I was justified "in declining to take part in a great and arduous task." He urged me "for God's sake to take a little more time to consider this." He could not see for the life of him, what I proposed to say "as a warrant for renouncing the part which seemed to be incumbent" on me, "unless through tenderness for us you have kept back other things." He ended that he was "a very poor creature fastened to a very great work," but

that his "mind was clear," and that he had "faith that the right" would "stand approved." He wrote to me again later that same morning to the effect that the course which I proposed to take might have an opposite tendency, so far as the Church of England was concerned, from that which either of us would desire; and asking me to consider whether there was any way in which my views might be met by detaching (as far as possible) the case of the English from the Irish Church, either in the form which might be given to the proposed Address to the Crown, or otherwise.

I was not, either then or afterwards, disposed to assert or admit that the disestablishment of the English Church was a just or logical consequence of the disestablishment of the Irish; and I needed no monitor to tell me that, in arguing the question, the subject of possible consequences in Great Britain must be treated, by those who were not careless as to aggravating that danger, with much caution and reserve. That was among the things which increased to me the difficulties of the situation.

But the suggestion that apprehensions as to those consequences, seriously entertained, could be removed or mitigated, or that scruples as to participation in a policy tending practically towards them could be overcome, by some change of phrase in an Address to the Crown, or by any other formal concession not affecting the substance of that policy, was only fit to be put before a person who wanted dust thrown into his eyes to induce him to recede from a resolution

unadvisedly taken. I was not in that position. If Gladstone's call upon me had been to join him in doing what I felt to be just and righteous towards Ireland, it would have been a matter of conscience with me to do so, whatever risk might be run; I should have wanted no other inducement. But even the withdrawal of civil recognition, privileges, and dignities from the Irish Church, and whatever else of the same kind might be summed up in the word "Establishment," was not in my view a question of justice or righteousness towards Ireland; though I thought it might be one of policy, proper (if it stood alone) to be conceded. And the scheme of Disendowment, which I saw was inevitably coming (though kept for a time in the background), so far from being in accordance with my sense of justice and righteousness, was, even in Ireland, contrary to it.

The pressure upon me did not cease. Letters and conversations passed between us at intervals until the Easter recess, in which we exchanged explanations, making the mind of each more clear to the other. Putting aside what belonged to the actual stage of the controversy, Gladstone thought that, when the political privileges of religions were not in question, a divergence would appear between (what might be called) the sectarian and the anti-sectarian elements of the Liberal party, in which both of us would probably go with the former rather than the latter. There was, he urged, hardly any phase of Liberal opinion more dangerous than that of the pure Church and State man, who would surrender anything rather

than break with the Civil Power. For many long years he had clung to the belief that the best hope of doing good to the Church was to make it the main aim to retain the confidence of Churchmen; and he did not undervalue it now. But he was now sure that it was chiefly by retaining the confidence of the Liberal party that any good was to be done to the Church in its highest interests. The best things which had been done to the Church in our time were the restoration of free speech in Convocation, and the emancipation of the Church in the Colonies—both due to Liberal Governments. In this he seemed to me to give the Liberal party more credit for liberality towards the Church than was really its due. In the Colonies, if what was done had been beneficial to the Church, it had certainly not been done for that reason; and it was notorious that Gladstone's Whig colleagues, in permitting Convocation to meet, had yielded to his influence against their own judgment.

On the 22nd of April I placed before him my reasons for the course which I felt obliged to take, in a form which, though long, I prefer not to abridge.

I will begin by stating the view of this question which, until recently, I was accustomed to take.

1. It is obviously possible that an Established Church may number among its members a considerable majority (as compared with any other religious body) of the aggregate population of the country in which it is established, and may yet be in a small minority in particular provinces or districts. No one, who thinks the present Church Establishments of Great Britain justifiable, will say that such a state of things is necessarily inconsistent with justice, or with civil and religious liberty. "Equality" is, perhaps, an inappropriate term; as the very

existence of a Church Establishment (unless the whole nation professes one form of religion) must involve some inequality, as between those who do, and those who do not belong to the Established Church.

2. The phrase, "United Church of England and Ireland," though first introduced by the Act of Union, and not signifying an organic union under one combined hierarchy, nevertheless expresses a substantial truth. Ireland was governed, from the time of its conquest till 1782, as a dependency of England; as were also the Channel Islands and the Isle of Man, which had (like Ireland) their local legislatures, and were not (like Wales) incorporated into the Realm of England. As a consequence of this principle of government, branches of the English Church were maintained, on the footing of State Establishments, in all those dependencies; their organisation being connected, in the smaller islands, with that of the English Church itself, and in the larger, on account of its magnitude and importance, kept distinct. But the Established Church in Ireland followed, under English dictation, all the changes of the English Establishment; it was and is identified, in doctrine, worship, and law, as well as by free inter-communion, with the English Church. Protestant ascendency, after the Reformation, was in Ireland another name for English ascendency. English ascendency continued during the interval between 1782 and 1800, which was only distinguished from the former period by the concession of greater freedom to the local Irish legislature, while still in Protestant hands: and it was preserved, so far at all events as the Church is concerned, by the fifth Article of the Act of Union.

3. The case of Ireland, therefore, stands historically, and in point of constitutional theory, in a quite different position from the case of Scotland; the Crown of which was never dependent upon the English Crown. Ireland came into the partnership of the United Kingdom, with her own special relations to the Crown of England, and with the laws and institutions which had resulted from those relations. In all parts of the United Kingdom, such laws and institutions as were not consistent with the equality of all citizens, as to personal and political rights, have given way to the progress of enlightenment and freedom: but this has not hitherto been deemed to be inconsistent with

the maintenance of public Religious Establishments, beneficial to those who take advantage of them, and open (but for differences of belief) to those who do not; and the whole United Church of England and Ireland may still be regarded, from an Imperial point of view, as the Church of the great majority (compared with any other religious body) of the aggregate population of that part of the United Kingdom which constituted before the Union the proper dominion of the Crown of England; agreeing also, in the cardinal point of Protestantism, with the faith of almost the whole population of Scotland. In the present day, no one would have thought of extending, for the first time, such an Establishment to Ireland; probably, no one would have thought of creating it, even in England, under the present circumstances of religious disunion in this country. But the maxims, "*quieta non movere*," and "*factum valet*," are of as great force in politics, generally speaking, as in law.

4. These, or such as these, were my views in 1854-55; when I remember expressing them very fully, in the shape of a long letter[1] to a friend, Arthur Gordon. I also expressed them publicly at Plymouth, on several occasions, when justifying the course I took on the Ecclesiastical Titles and Maynooth questions. And when, in January 1867, Lord Clarendon, by Lord Russell's desire, mentioned to me Lord Russell's opinion that the Irish Church question ought to be taken up by the Liberal party, I replied (on similar grounds) that I thought the effect would rather be to create than to solve difficulties.

5. I must acknowledge that the malignant character of Fenianism, as since developed—its influence upon the Irish race abroad, as well as at home; and (I may add) the revolutionary character of the remedies, as to property, which some persons of note have proposed, and on which a new school of Liberals seems disposed to look with favour—have forced on me the conviction that the time has come when the causes of this disaffection must be probed to the bottom; and when, if any just and practicable remedy can be discovered, we ought to apply it, at any cost short of the abandonment of the primary duties of government, or the introduction into other parts of the Empire

[1] See *Memorials*, Part I. vol. ii. p. 290.

of greater evils and dangers than those which we hope to cure. It is difficult to feel confident that either the total abolition, or any possible modification, of the Irish Church Establishment, would have any very powerful healing influence upon those who are now disaffected; and, if it had not, it would certainly add to their number. But, upon the whole, I yield to the force of the arguments that nature is at war with the theory of a complete political *solidarité* between England and Ireland; that Ireland cannot practically be governed, either as really one with, or as a mere dependency of England; and that, in this point of view, the present position of the Church Establishment may be, and probably is, a real obstacle to the existence of such relations of mutual contentment and confidence between the governors and the governed in Ireland, as ought to exist, if disaffection is to be removed.

6. But then comes the question, what would be the legitimate consequence of admitting the right of Ireland to be regarded, for this purpose, no longer in the light of a dependency of the English Crown, but as a separate *integer* (like Scotland) in the United Kingdom? It appears to me manifest that, in order to produce, upon this principle, a true relative equality between Ireland and the other constituent parts of the United Kingdom (in each of which the Church of the majority enjoys the benefits of State Establishment), there ought to be a Roman Catholic Church Establishment in Ireland; or, at least, such a preponderating endowment of the Roman Catholic Church there, out of the property now devoted to the Established Church, as was lately recommended by Lord Russell. The Roman Catholics of Ireland are relatively poorer than the Protestants of any part of the United Kingdom: they are also a much greater relative majority of the whole Irish people, than the members of the Scottish Establishment are of the Scotch people, or the members of the English Establishment of the English people.

7. If this would be, upon principle, the consistent and logical result, it becomes important to consider what it is which makes the attainment of equality by these means impossible. The Irish Roman Catholics do not themselves advance (indeed they repudiate) any claim to Establishment or State endowment; and the Scotch and English Protestants are inflexibly opposed

to it—some from dislike of all Church Establishments, and others (probably the great majority) from dislike of the Roman Catholic religion. In this negative sense, the spirit of Protestant ascendency is still as powerful as ever; it is inaccessible to any view of political justice or expediency, which goes towards the Establishment or endowment of the religion of the majority in Ireland, as the religion of the majority is established and endowed in Scotland and in England. Whether the Irish Roman Catholic clergy, in renouncing all claims to these advantages, are influenced by the knowledge that their attainment is impossible, may perhaps be doubtful; but, at any rate, they cannot be insensible to the fact; and it cannot be supposed that when, for reasons such as these, the path to political equality is blocked up in this direction, any other arrangement will be accepted by them as final and satisfactory, which, while professing to have that end in view, does not really and substantially arrive at it.

8. If the practical argument for change still continues in force, notwithstanding the necessity of yielding to a state of public opinion which refuses to follow the principle to its consistent results, the questions, what that change ought to be, and what will be its consequences, at once assume a new character. Disestablishment (in the sense of the abolition of those secular privileges and incidents which directly connect the law, institutions, and government of the Church with the political system of the State) may still be necessary. But why Disendowment? There may, no doubt, be parts of Ireland where the endowments are so entirely disproportionate to the Protestant population which receives benefit from them, as to justify their resumption, on that ground, by the State. But, in many other parts, they are not in excess of the reasonable needs of a considerable Protestant population. In such cases, if there were any competing claim which ought, on principles of justice, to be preferred, it might be right to withdraw them, in order to satisfy that claim. But, if there be no such competing claim, I cannot perceive that distributive, or any other kind of *justice*, requires the actual state of title and possession to be disturbed. I do not agree with those who see no distinction between property granted or secured by public acts of the State to an Established Church

and private property. But there is a medium between this and the opposite theory, that property which has been devoted for centuries by such public acts to the religious uses of a particular Church is morally in the same category with Crown lands, or money in the Exchequer. The substantial use and enjoyment of that property is with the members of the Church in possession of it: they are a permanent class, who might have made other provision for their own religious wants, if that provision had not been made; whose institutions, arrangements, and habits have all been formed in reliance upon it; who cannot now be put in the same situation in which they would have stood, if this had been otherwise; and on whom (if that endowment be withdrawn) either the pecuniary burden of supplying it, or the loss of spiritual ministrations if it is not supplied, must fall. I cannot understand why, if they are permitted to retain their churches and residence-houses, they might not, under these circumstances, also be allowed to retain the means of which they are actually in possession, by which provision is made for the service of those churches, and the occupation and maintenance of those houses. To take away and secularise property dedicated to such uses, and so long enjoyed by a loyal and well-affected community—not to apply it to any other purposes in obedience to some demand of relative justice, but in order that it may be desecrated for the mere desecration's sake, and scrambled for or quarrelled over by the general Irish public,—seems to me neither just nor politic. It hurts those who suffer by it, and does no good to anybody else.

9. The plan which, although not embodied in the present Resolutions, I understand to be practically intended by them, is (in my view) a plan of general disendowment, as well as disestablishment. Churches and residence-houses (though possessing, no doubt, a pecuniary value) are not, in the ordinary sense of the word, endowments; and the private benefactions of modern date, which I presume it is intended to preserve, are not (as far as I am aware) of importance in point of amount. The saving of present life-interests merely postpones and makes gradual, in particular places, the operation of Disendowment; which, in every place, as soon as the life of the present incumbent drops, will become absolute and complete. It seems to

me a fallacy to capitalise the value of these life-interests, as if their continuance for the benefit of individuals were a deduction from disendowment in favour of the Church.

10. It may, however, be said, that the substance of a Church Establishment consists in its endowments,—that disestablishment without disendowment would not attain the desired end, —and that, since we cannot endow the Roman Catholic Church, the endowments of the Protestant Church must be taken away in order to produce equality as between the different religious bodies in Ireland. Whether this, in the extent and form in which I have objected to it as in my view neither just nor politic, has now become a political necessity, I am not sure ;— if so, I think that such necessity may have arisen rather from the manner in which the question has been handled, than from any previous insuperable difficulty in the way of a less violent solution. But, assuming it to be now inevitable, I observe that this is a form and decree of Equality which has not hitherto been found necessary, and does not now exist in any other part of the United Kingdom. And, by now for the first time establishing equality on this basis as between all the religious bodies in Ireland, we shall be introducing a new form of relative inequality, as between Ireland and the other parts of the United Kingdom : which will be equally distasteful to those in Ireland who (being the majority) are without, or (being the minority) have been deprived of, the benefits of Establishment and Endowment, and to those in Scotland and England who do not participate in the benefits of the Scotch and English Establishments, and who will henceforth appeal to the new Irish system, as expressing the only true rule of political justice.

11. Principles of this kind, when once introduced under a free popular government (though in the first instance with a limited and partial application), are sure to work themselves out, and generally at no great distance of time, to their natural results. It is perfectly true, that the English and Scotch Church Establishments may be defended, upon their merits, by arguments wholly inapplicable to the Irish Church : but it is not by mere argument upon the merits of a particular institution that it can be successfully defended in the long-run against the inroads of a contrary principle once admitted, and against the persevering

opposition of great social forces. If irresistible social forces now prevent the entertainment, on its merits, of any argument for the endowment of the Roman Catholic Church in Ireland, they may be found equally powerful to overthrow all Church Establishments, when the example has once been set, and the impulse given. It is idle to conceal from ourselves, that a very powerful social organisation, already comprehending most of the non-conformist bodies and influencing the rest, is actively and incessantly at work for this purpose; or, that this very organisation, combined with that of the Roman Catholics, is the true motive power by which the overthrow of the Irish Church Establishment is now made practicable. Their influence over the Liberal party throughout the country is already very great: it manifests itself in other ways, and in the promotion of other measures aggressive upon Church Establishments, as well as in forwarding this measure. It will not be less powerful after victory in the attack upon Church Establishments at their weakest point: nor will success against the Protestant Establishment in Ireland diminish the hostility,—the necessary, and on their principles justifiable hostility,—of the Roman Catholics of the United Kingdom to Protestant Establishments everywhere. The members of the disestablished Church in Ireland will either demand that the principle by which they are sufferers should be equally applied to other parts of the United Kingdom, or they will (at least) be very lukewarm allies of those who would not, or could not, help them in their own hour of need. Both the Scotch and English Churches have their weak and sore points. The former is everywhere harassed by what seems a gratuitous, yet successful, rivalry of free Churches, differing from itself only in not being Established. The latter is distracted by internal dissensions, and cramped in its efficiency and powers of expansion and self-protection by the controlling authority which the State assumes in return for the benefits of Establishment. The attack on each will be made on its own grounds, successively and in detail; and will be aided, in each case, by the religious differences between the two Churches;—Episcopacy and Presbyterianism not being, as yet, so far reconciled, as to make either likely to be the hearty supporter of the other in its time of peril.

12. It may be that, even if these things follow, and if all

the Church Establishments of the United Kingdom fall, some greater good will ultimately spring up from their ruins. I am not one of those who identify the Church with any form of temporal Establishment, or who think that, without such Establishments, there can be no true national Christianity. But, in a country where such Establishments have for ages existed, where the people have been trained to depend upon them, where they have become interwoven with all our political and social institutions,—where they are the means of diffusing great and constant benefits, religious, moral, and social, throughout the whole land, and especially in those parts of it which would otherwise be most neglected,—the immediate evils which must result from their destruction, and which might continue through a long period of transition, are so certain and great, that I do not feel justified in contributing to bring them on, in the hope of any uncertain future good.

13. I have been, through my whole life, ever since I have had any settled principles or habits of thought, a Churchman by conviction. I have no object in life dearer, no conception of public duty higher, than those which are connected with my attachment to the Church, and which would be violated by any act on my part which might tend to diminish its moral power and means of influence in this country. If the dangers which I apprehend are really impending, I wish to be free from the responsibility, even in appearance, of accelerating or increasing them. Assuming some great change of this kind to be, under the actual circumstances of the country, inevitable in fact, and necessary for the good government of Ireland, I cannot but feel that the proposed measure is different in substance from that which, upon the same assumptions, would have commended itself to my own judgment; and that the difference is of a kind likely to be fruitful of consequences which I wish to avert. I cannot separate myself in feeling from my fellow-churchmen in Ireland: it may be a diseased limb which is to be amputated; but it is, to me, as a limb of my own. My observation and experience of public men and public affairs does not at all lead me to the conclusion that every public man is called upon to take part (even when he may perceive them to have become just and inevitable) in carrying measures opposed to his own previous opinions

and sympathies. In matters of less moment, I would gladly yield my feelings and judgment to those of men wiser and bolder than myself: and, in all matters not involving my sense of duty, I am as likely as any man to be guided by my personal and political attachments. But in this matter it is otherwise. I will only now add that the course which I have taken has been taken deliberately; that I foresaw it, as likely to prove an unavoidable necessity, from the time when it first became probable that the question might assume that practical shape which has now been given to it; and that I explained myself fully upon this point more than once in the course of last autumn to the friend (Cardwell) with whom I have had most frequent opportunities of intimate communication on such subjects. My difficulties and scruples, therefore, whether reasonable or not, cannot have come entirely by surprise, even upon those who may have believed that, when the time for action arrived, they would not prove insuperable.

To Gladstone, all this seemed insufficient to justify my dissent from his Resolutions; and, in returning my communication, he wrote,[1] "Forgive me if I am still unable to discern the sufficiency of your reasons from your own point of view," and that perhaps it followed from this inability that he would be glad if the paper remained unprinted. He added that the reliance of my friends on my character was implicit; they wanted no such explanation. "It is the world only that can *hereafter* want them, and if you print now, you tend to stereotype what you may find it desirable after a time to widen or contract." To my wife he wrote that a long and painful experience had convinced him, much against his will, "that if the Church is to perish, it will

[1] 6th May 1868.

be from wounds received in the house and at the hands of her friends."

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14 STRATFORD PLACE, *Sunday.*

MY DEAR SIR ROUNDELL—It is quite unnecessary for me to repeat what I have already said, and what you must already have heard from others whose judgment is of far greater weight than mine,—of the grief and dismay with which all of us who have so long looked up to you with admiration and respect would regard your severance from a party of which you are one of the chiefest pillars.

The blow would be the more irreparable from the fact that the very act itself would only enhance by its disinterestedness and self-sacrifice that admiration and respect. I forbear to urge such considerations; first, because I know that they must have been already anxiously weighed by you, and secondly, because I feel that with you they will not and ought not to preponderate against a conviction of duty to higher obligations.

I feel all the delicacy, and in some ways the superfluity, of my writing at all to one so much more capable of forming a right conclusion on such a subject than myself. But as you were kind enough not to discourage my speaking to you on such a subject on Friday, I hope you will forgive my asking your consideration of two points.

First, I understood you not to object to the action of the Liberal party in respect of the *Irish Church* as a question by itself, but that you were actuated by your view of what might be the result of such a policy (or rather of the public sentiment it might create) on the position of the English Church. Now that the Irish Establishment is doomed is a fact which cannot be doubted, and which I do not understand you even to disapprove.

But will not the fact of your treating the two as so intimately connected as to call upon you to take such a decided course go a long way to contribute towards identifying their fate? Is not far the best solution for the English Church one in which its defenders shall say, our position rests on wholly different principles and relies on wholly distinct arguments from that of

the Irish Establishment? Yet if that be so, why should your apprehensions for the one be founded on the abolition of the other? Surely the course you contemplate will go a long way in the eyes of the defenders of the Church, who will look to you as their champion, and in the eyes of its enemies, who will regard you as its representative, to establish the *solidarité* of the two Churches. But if their fortunes *are* inseparable, who can doubt what the issue will be?

Surely this is an amputation of a diseased limb at which the most attached friend of the patient may attend as a salutary remedy. If I may be allowed to repeat myself, ought you not to "stand between the living and the dead that the plague may be stayed"? Secondly,—which seems to me a matter most deserving your consideration—you cannot doubt Gladstone's real attachment to the English Church, both in sentiment and conviction. If any one can dominate the spirit of the next Parliament, can "ride the whirlwind and direct the storm" on Church questions, it is he. For that object it is essential that he should have all the support both within his Cabinet and without it from those who are the friends of the Church. If you separate from him (and with your secession must necessarily ensue that of those who think with you and look to you for guidance) you will weaken the *right* and proportionately strengthen the *left* of the Liberal party; you will drive Gladstone by the force of circumstances into the hands of the Liberationists. Are you not bound to protect him and the Church from this pressure? Are you not called upon at least to make the *experiment* whether by the aid of the moderate section of the Party matters cannot be satisfactorily concluded? If you should find that *upon trial* you and your friends were not able to moderate the course of events, and that you were being dragged by the tide in a direction which you disapproved, then I, for one, should not utter one word in deprecation of your secession. It seems to me that when the danger was really in sight (which it is not yet) such an action on your part would be far more effective for the cause which it is intended to serve, because it would be far more intelligible and justifiable in the sight of all men.

Is it not a stronger position to take up—I don't say for yourself, but for the Church to say, "When the Irish Church

has been dealt with, if the English Church is attacked I will withdraw," than to say, "If the Irish Church falls, the English Church must follow it, and I will take no part in the one because I feel confident that their fate is inseparable."

Forgive the freedom with which you have encouraged one so much younger and less wise than yourself to write on so momentous a topic.

I am sure you will not misapprehend my motives, and will excuse my presumption. Above all, do not suppose I wish to *argue* the question with you *or that I desire any answer to this long letter.*

I am going to-morrow to Nuneham to join my dear little boy. I wish you and Lady Laura would give us a few days there. Your visit gave my dear father so much pleasure, and you could not do him a greater kindness than to repeat it.—Yours most devotedly, W. V. HARCOURT.

Even Cardwell, as late as the 25th of April, still tried to persuade me that I should "best promote my own views by giving my assistance, and exercising my influence, as the thing proceeded." But my conscience was not on their side; and now, after the lapse of more than twenty years, I am as well satisfied as ever of the practical sufficiency of those reasons: the course of subsequent events, and the part taken by Gladstone himself in them, have been the best verification of the judgment which I formed.

It was the course most consistent with my feelings, under the circumstances of that time, to abstain from voting until the question passed from the stage of abstract Resolutions into a more definite and practical form; and, even as to speaking, I thought it best to wait for the opportunity which the General Election,

sure to follow, would offer, of explaining myself to my constituents. I therefore took no part in the debate or division of the 27th April on Gladstone's Resolutions, which were carried in Committee by a majority of 330 to 265. My vote, if I had voted, would have only made the difference of one; and I think no one misunderstood or blamed me for manifesting, in that way, my regard for the friends with whom I could not agree, and the constituents whose forbearance I had experienced. If there were any persons in the country with whom my opinion had weight, it was well enough known; and its weight would not be less, because it might be seen that I was making a sacrifice of something more than personal ambition and interest, and was content to do so in silence. For similar reasons, I declined to take part in public demonstrations of opinion against the Resolutions which the House adopted, though invited to do so by more than one person of influence —among others, by Arthur Stanley, then Dean of Westminster.

After Mr. Gladstone's Resolutions had been carried, the Government determined to dissolve Parliament. This could not conveniently be done till October, but the business of the session was wound up as quickly as possible. It became necessary, in the meantime, that I should come to an understanding with my friends at Richmond; which I did, both by a correspondence with the Liberal agent there, and afterwards at a public meeting on the 21st of August. The substance of the explanation contained in my

letters (which in my speech at the meeting was repeated and amplified) was, that I should not oppose any change affecting merely the political connection between the Irish Church and the State, with respect to such matters as the seats of Bishops in the House of Lords, their nomination by the Crown, the jurisdiction of the Irish Ecclesiastical Courts, etc., which might be supposed to be badges of political ascendency, inconsistent with the present circumstances of Ireland, and creating a sense of grievance on the part of the Roman Catholics; that I should not advocate, against the clear sense of the nation and my own feelings and prepossessions, a Roman Catholic Establishment, general or partial; but that, while such a plan (which would have seemed to me to result logically from the principle of dealing with Ireland as we had dealt with England and Scotland, had that principle been assumed as the basis of legislation) might have rendered a general transfer of Church endowments in Ireland necessary, I was unable to discover any necessity or justification for their confiscation to the State, when it was universally agreed that no such competing claim on the part of the Roman Catholics or any other religious body in Ireland was to be recognised. Not dissembling my repugnance to the secularisation, under any but very extraordinary circumstances, of any property dedicated to the service of religion, especially religion in a form which I believed substantially to represent the truth, I should not think myself bound to oppose it in Ireland, when from local circumstances it might

be apparent that the property to be so dealt with was wholly disproportionate to the wants of any resident Protestant population deriving benefit from it; but I should be desirous of confining disendowment to such cases, and of dealing with other cases in the most liberal manner possible; and this, both as the most just and equitable course towards the Protestants, and perfectly consistent with justice to the Roman Catholics, and also as the most likely course to mitigate those dangers to the Churches of Scotland and England, of which I should otherwise feel apprehensive. In the position which I occupied, I said I must reserve to myself the fullest liberty both of speech and of action, consistent with the views and intentions thus explained; and, if there were any hesitation on the part of my friends at Richmond as to the expediency of my being a candidate on those terms, I should much prefer being permitted honourably and gratefully to retire, to running any risk of afterwards disappointing them.

These explanations satisfied my friends, and all who had hitherto supported me were content again to return me to Parliament. A Roman Catholic barrister did, indeed, on the invitation of a few persons, come forward to oppose me, but without any chance of success. So stood matters at Richmond, when Sir William Heathcote, on the 2nd of October, announced that the state of his health obliged him to retire from the representation of Oxford; and on the 13th of the same month a requisition from many members of the University, asking my consent to be

put in nomination, was sent me in a letter from Mr. Wayte, the President of my old College, Trinity. I had been prepared for it by letters from Sir John Coleridge and his son, and from Goldwin Smith and Dean Hook, all promising their help; and also from Gladstone himself, who wrote on the 11th of October:—

> Oxford sustains a heavy loss by the retirement of our admirable friend Sir William Heathcote from the representation. It does not become me to take any forward part in the measures for supplying his place. And I do not know how far it would be agreeable to your views to become his successor. These things, however, appear to me: First, that this would be the best arrangement that could be made for the University at the present juncture; secondly, that your relations to the Liberal party would not be altered by it for the worse; thirdly, that, from your actual position with respect to the Irish Church, your sitting for Oxford might give you an increase of power for good in the adjustment of the detailed arrangements which will be necessary; lastly, as I see no personal reason which ought to be in your way, I may add, with how much pleasure I should offer any co-operation in my power; the more retired, probably, the better.

I accepted the invitation with the approval of Lord Zetland and my other Richmond friends, not withdrawing from my candidature at Richmond.

My chance of then coming in for Oxford might have been better if Sir William Heathcote had announced his retirement some months earlier. In that case I should have stood for Oxford only, and failure would have excluded me from Parliament. If elected, I should have accepted the position as defining, for the future, my line of public duty, and should

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probably have been content to give up for it all other ambition. But the advice as to his health, on which Sir William Heathcote's resolution was taken, was (no doubt) delayed as long as possible. That delay, I have always thought, made a great difference to me.

Those by whom I was invited to stand were, for the most part, on the Liberal side; and with many Conservatives that was a sufficient reason for opposing me. If some of my best and oldest friends could suppose that my difference from Gladstone would disappear when he came to form a Cabinet, it ought not to have been a surprise to me that there were Conservatives who thought the same. The leading organ [1] of one (the Evangelical) school of Churchmen went against me for no better reason than that there would be one vote more on the side of the Irish Church in the next critical division, if I were returned for Richmond, and somebody else by the Conservative majority at Oxford. To out-and-out Tories it was a sufficient objection that I was not one of themselves.

It was decided, therefore, in the councils of the Carlton Club, that there should be a contest upon the usual party lines. Their candidate was John Robert Mowbray (in our old College days, ever since which we had been friends, his name was Cornish), who had been Judge-Advocate-General under one of Lord Derby's Administrations. He was not likely to rise higher in the political world; but he was an upright, honourable, sensible man, generally liked,

[1] The *Record*.

and he had kept clear of theological controversies. He had, of course, the general support of his party. There were, however, some Conservatives who would not join in opposing me, particularly Lord Salisbury, who (not admitting the rule against the interference of peers in elections to be applicable to the Universities) gave his name to my London Committee.[1]

My success against this opposition might have been possible, perhaps even probable, but for the disposition of some Churchmen (neutral as between political parties, but on whose attitude much depended), to be exacting on subjects, as to which I thought it inconsistent with self-respect for a candidate desirous of doing good service to Church and State to compromise his independence of judgment and action. University elections are not like others. The candidate issues no addresses, attends no meetings, makes no speeches, does not canvass. He cannot explain himself in any of these ways, when cross-examined, as he is apt to be by some of the serious and scrupulous thinkers who abound in those constituencies, as to the whole range of his opinions on things human and divine. There is a limit, beyond which he cannot bind himself when so cross-examined, without destroying the value of success. I determined not to overpass that limit. With those who asked me questions as to merely political contingencies, I was not unsuccessful. I said that it would be inconsistent with my sense of the duty and responsibility incumbent upon me at

[1] Sir William Erle was its Chairman.

that time, if I were to enter into any engagements either for the purpose of conciliating support or of disarming opposition at Oxford. In all these matters (I added) I must, if in Parliament, do the best I can, according to my conscientious convictions, for what I believe to be the general good of the Church and country. If it were necessary to choose between the representation of the University and the power of exercising, in difficult and anxious times, some practical influence for the good of the University, the Church, and the nation, I should not hesitate to prefer the latter. *Malo vos salvos esse, Quirites, qualicunque animo erga me futuri estis.*[1] Whether I am a man who can be trusted, or not, to exercise a sound judgment and to act honestly upon it, may (I venture to think) be more safely determined by reference to my public conduct during the last twenty years, than by any explanation to be given now with reference to this particular election.

The difficulty was greater with Dr. Pusey, whose support might have brought large numbers to my side. He wrote to me on the 19th of October :—

> You know how anxious I must be to take part in your election from remembrance of your kindnesses of old in the matter of the six doctors[2] and Hawkins's subsequent persecution, and also from my value and regard for yourself.
>
> But there is one question prominent in my mind in our

[1] "I prefer that you should be safe, Romans, whatever you may be disposed to think of myself" (Liv. lib. iii. 68.—Speech of T. Quinctius Capitolinus to the Roman people).

[2] In 1843, when his sermon on the Holy Eucharist was censured (see Part I. of my *Memorials*, vol. i. p. 398).

University election, viz. Coleridge's Bill.[1] It would be to blow hot and cold, to have been so earnest as I have been against that Bill, and to denounce it so strongly, and yet knowingly to vote for one who would support it. Now, I have not observed the votes, so I do not know whether you voted, or, if so, how. You know that, though I should prefer things as they are (for they will right themselves if we are left to ourselves, please God)—but that I should, as the least of two evils, prefer admitting any who, by signing the Nicene Creed, declare themselves to hold the common faith; or (2) that the State should confiscate so much of our funds as it should think good, in order to provide for those members of the State whom the Church has lost. What I do object to is this plan of Coleridge's; which, sooner or later, would make the University materialist like that of France, or rationalist like those of Germany, or both. For, with the power which the Oxford Rationalists at present have, owing to accidental circumstances, they could perpetuate their tradition of faithlessness, if people's consciences do not stand in the way. Now, is it lawful to ask you, either for the satisfying of my own conscience, or of those of others, what your mind is on this?

I gathered, from my conversation with you, that you have neither the same dread of the present Court of Appeal destroying all discipline as to faith, and making any denial of faith tenable in the Church of England; nor would you, probably, think that an appeal to the Bishops, as promised us virtually in 24 Henry VIII., would mend matters. Probably too, as a lawyer, you would have some feeling as to the province of the State in matters of property, or as to the judicial mind of lawyers in the weighing of evidence, in comparison with that of ecclesiastics. On the other hand, I have no anxiety as to temporals, if only the wolves are not allowed to tear the flock; while I think that the legal habit of giving the benefit of a doubt had the effect, both in the Gorham and in the *Essays and Reviews* case, of raising a doubt where there ought to have been none.

[1] The Bill introduced by John Duke Coleridge (afterwards Lord Chief-Justice) in 1867, for extending the abolition of tests in the University to Fellowships and other College offices.

I should not object to see temporals disposed of by any civil Court, and I should prefer a civil Court to one purely Spiritual. If the claim to be heard against an ecclesiastical judgment came in the way of a suit in the Court of Queen's Bench against the alleged wrong as to property, we should (as you said) be no worse off than Baptists or Roman Catholics might be; but spiritual might be left to spiritual judges, temporal to temporal judges.

The third point on which I am anxious is House of Commons legislation as to ecclesiastical matters. Considering of whom the House of Commons is composed, containing a large number of unbelievers or misbelievers, I think that we have a right to claim that it should not in any way, however slightly, modify the actual Prayer-book, rubrics, and ceremonies of the Church of England, as settled by the Savoy[1] Conference. In this, I suppose, we are safe as to you; since the Erastians are, I suppose, among the Conservatives chiefly, and the *Times*.

I would make as much or as little use of your answer, as you would like. My primary object is for myself.—Yours affectionately, E. B. PUSEY.

Here was a letter from a man whom I revered, written in a friendly spirit, dealing with subjects of the greatest moment and of no slight difficulty, as to which (while to a great extent in sympathy with him) I could not surrender to any man the keeping of my conscience. With respect to Coleridge's Bill, he might easily have known without asking me that I had not voted for it. My opinion of its possible bad effects, if passed without any qualifications or safeguards, was not very different from his own; but, while I might be willing to concede some things in one direction for the sake of saving others, he was

[1] Dr. Pusey was not a likely man to have made a slip, but the Savoy Conference certainly did not "settle" the "actual Prayer-book," etc.

ready to give up, in another direction, things which I did not see the need of sacrificing. Many of my Liberal supporters had been with difficulty restrained from catechising me on this subject (on which they knew I did not agree with them) from the opposite point of view; and if they were content to leave me free, it was due to them that I should not give pledges to others, limiting my freedom of action. As to the question of Ecclesiastical Judicature, Dr. Pusey seemed to me to be aiming at the impossible, unless the English as well as the Irish Church were to be disestablished. I did not, then or ever, see how, under the system of an Established Church, it would be possible to exclude from the cognisance of Royal tribunals the interpretation of Acts of Parliament made concerning religion, or any other class of ecclesiastical questions upon which temporal rights depended. I agreed with him in his objection to changes, by mere parliamentary legislation, in the authorised forms of worship of the Church of England; but I should have entertained the same objection, whatever might have been the constitution of Parliament; the actual constitution of Parliament made it, in my view, not more but less probable that it might be attempted to make such changes; and I was by no means sure what Dr. Pusey might, or might not, look upon as an infringement of the principle. I could not carry my objection to parliamentary legislation on ecclesiastical matters to an extent which (having regard to what had already been done in that way) must necessarily produce a

deadlock in the relations between Church and State: much less could I do so blindfold, without knowing the practical issues which might depend upon it.

Two things were clear to me, under these circumstances: the first, that on these great subjects, which would require full discussion and perhaps many explanations if all misunderstanding were to be avoided, I ought not to give assurances or enter into engagements going beyond my previously declared and known opinions, under the pressure or for the purposes of an impending election, even if I could hope that Dr. Pusey would be satisfied with the state of my mind on all the points in question. The other was that, if I could have done so, it would neither have been right to ask Dr. Pusey to keep what I said to himself, nor prudent to open against myself the flood of cross-questioning which might have followed. I therefore, with a reluctance proportionate to the respect which I felt for him, came to the conclusion that I ought to forego Dr. Pusey's support, rather than go for the purpose of the election into those questions; and I answered him to the effect that, although at any other time I would gladly have entered into them with him, I could not do so with a view to that election! and that, if I were returned at all for Oxford, I must go into the House of Commons free to act as I might think wisest and best on all those points.

Being thus thrown back mainly upon Liberal support, which was very generously given, it soon became manifest that the efforts of my friends would be in

vain; and on the 12th of November, after ascertaining by a comparison of promises what the result of a poll must be, my Oxford Committee[1] withdrew from the contest. On the 19th I was returned for Richmond.

This disappointment, coming at that particular time, and "putting a close" (as Sir John Taylor Coleridge truly said) "to what had been a dream of many years to me," was, it must be confessed, a serious mortification. Then, as on some other occasions during my life, I was helped, in a way not extraordinary but potent in its effect, to preserve or recover the balance of my mind. Just at the critical time (on the 8th November 1868), Mr. Wilmot, the Rector of our parish church in London,[2] to which we always went—a very good man of the Evangelical school, but not generally a powerful preacher—preached a sermon of great force and reality, which came home to me as if meant for my own case, upon the text,[3] "Trust in the Lord with all thine heart, and lean not unto thine own understanding; in all thy ways acknowledge Him, and He shall direct thy paths."

God (said the preacher) may direct us in a way in which we may meet disappointment. There may be moments in a Christian's life, when, with the aged Patriarch, he is ready to exclaim, "All these things are against me." God may obstruct

[1] The Warden of New College, Dr. Sewell, was its chairman.

[2] All Souls, Langham Place. Mr. Wilmot (who had been in the Army) was second son of Sir Eardley Wilmot, once Governor of Van Diemen's Land; brother of Sir J. E. Wilmot, one of my most distinguished schoolfellows at Winchester; and a descendant of the eminent Chief Justice of that name.

[3] Proverbs iii. 5, 6.

us in purposes which seem favourable, and indicate others which seem to hold out no promise. He may defeat our plans, when they seem almost mature. He may remove the very instrument by which we hoped to have effected them. He may remove everything in a moment, and bring the cloud across the sky when our sun appeared to be brightest. . . . And yet, in all this, God is directing our path. The promise is sure: the end is blessed, though the path appears rugged and unpromising. Are not all events in His power; has He not ten thousand ways of accomplishing His purposes? . . . And, if His discipline conduce to more humility and self-knowledge, shall we doubt, in any circumstances, that He has led us forth by the right way? . . . He *could* (and He *would*, if there were no other way of doing it)—He could command the pillar and the cloud; but He can do it in other ways than by a miracle. His direction will be to every trusting heart so plain and sure that it will be practically a fulfilment of the promise to Israel:[1] "Thine ears shall hear a word behind thee, saying, This is the way, walk ye in it, when ye turn to the right hand, and when ye turn to the left."

This was the sort of encouragement which I needed; and it refreshed and invigorated me.

The following extracts are from the *Times* of 22nd October and 13th November 1868.

On the other hand, Sir Roundell Palmer is, next to Mr. Gladstone and Lord Derby, the most illustrious living son of the University. His whole life has been a course of distinction at the University, at the Bar, in the Church, and in Parliament. His academical career was signalised by the most brilliant successes: he was for years a fellow of one of the principal colleges. In his profession—in the earlier stage no less than recently, in the period of his acknowledged supremacy—he has

[1] Isaiah xxx. 21.

exhibited the high qualifications, moral and intellectual, which a University training should confer upon an Advocate. His rare conscientiousness is equally illustrated by the conspicuous fidelity with which he discharges his everyday duties as leading counsel, mastering his client's case down to the minutest details, and by his last act of magnanimity, by which, for the sake of principle, he declared himself willing to renounce the consummation of his professional career when it lay almost within his grasp.

He is an earnest Law Reformer. To cite three out of many instances, he has proved himself a benefactor to the profession by heading the movement for the adoption of a single set of Law Reports in lieu of the numerous and conflicting series which previously existed; to the public by his broad and well-considered scheme for the reorganisation of the tribunals of justice, and to the entire community of nations by his efforts to raise international law to the level of existing civilisation. His affection for the Church, her doctrines, institutions, and works, is unquestioned and unquestionable, while his services in her behalf, both public and private, are notorious. In Parliament he has been an energetic but ever-prudent Liberal, and whether as Law Officer of the Crown or as a member of the Opposition, he has long been recognised as a high authority on the legal bearing of the weightiest affairs of State. . . .

Those who value the honours of Oxford will, we are assured, insist upon a high Standard in their Representative, and will resolve now to elect one who recognises his duty to the whole nation.

. . . . . .

It is the preponderating mass of their (the clerical members of the Convocation of Oxford) promised votes that has turned the scale against the very best man Oxford could possibly have chosen at this crisis. Mr. Mowbray, it is fully believed, is "firm" in the Church; Sir Roundell Palmer has betrayed a dangerous tendency to form his own opinions and to take his stand upon them!

After the elections, Disraeli resigned, without meeting the new Parliament, and Gladstone came

into power. The last important act of the Conservative Government was to make Tait Archbishop of Canterbury; who, although certainly the most Liberal of all the Primates of my time, was not the man whom Gladstone would have chosen. In the new Ministry, Cardwell was Secretary for War; Lowe, Chancellor of the Exchequer; and Bright, President of the Board of Trade. Cardwell had refused, as lately as August, to "give up the hope of seeing Gladstone's Seals in my hands"; but I had written to him that,

> even if I had myself the weakness to give up, for the sake of co-operation with my friends, my own settled opinions, the necessary consequence would be that I should cease to possess or deserve any influence; and another man, who had not been called upon to make any such sacrifice, would be far more useful for all the purposes of public good than I could be.

And I added that,

> of the four men,[1] who, putting myself aside, might be regarded as possible candidates for the Great Seal under Gladstone's Administration, viz. Lord Westbury, Lord Romilly, Cockburn, and Lord Justice Wood, the latter (at all events), besides being the superior of the other three in most of the qualifications required for a Chancellor, would strengthen the hands of such men as himself (Cardwell) in the Cabinet, much more than any man living could do, who was even suspected of compromising his own convictions to sit there.

On the day after the Queen sent for him (the 4th December), Gladstone asked me to call upon him, and I made on the following day this note of what passed between us :—

> Nothing could exceed the frankness and friendliness of his

[1] Lord Cranworth had died in the preceding month, July 1868.

conversation with me. He said he had mentioned me to Her Majesty as the person whom he would most have wished to see in the office of Lord Chancellor, and that he had Her Majesty's authority to say that, if it were possible for me to accept that office, it would meet with Her Majesty's approval. At the same time, he was manifestly as sensible as I was of the impossibility of my waiving my opinion on the Irish question, or of any such approximation to it on his own part as to make my joining the Cabinet practicable. A few words soon established a complete understanding between us on this point; and I heard from him with pleasure that the post which I could not take would be offered to Sir W. P. Wood, whom (as he knew) I had myself most wished, under the circumstances, to see in it. He then said that he did not despair of our future co-operation, notwithstanding the present difference; and he proposed to me to accept the post of Lord Justice in succession to Sir W. P. Wood, with a peerage; giving reasons of some weight in favour of the opinion that I should be better able to reconcile the free expression of my views upon the Irish Church question with the attitude which I wished to maintain towards the new Government in the House of Lords than in the House of Commons.

I took a night to think over this proposal, and on the next day wrote declining it, saying—

I have carefully considered the question on which I reserved my answer to you; and, upon the balance of public and private considerations, taken together, I have decided against relinquishing my present position at the Bar and in the House of Commons. I hope you will believe me when I say that I have not omitted to give due weight to the apparent inclination of your judgment (as well as Cardwell's, with whom I had a conversation later yesterday) in favour of the opposite course; and that I should have decided otherwise had I not felt confident of my own power, as well as wish, to reconcile such differences of opinion from your Government as I may be compelled to avow and act upon with a determination to maintain cordial relations (if they will permit me) with the Liberal party, and a personal attachment towards yourself, which I am sure nothing can ever disturb.

The legal appointments consequent upon Lord Hatherley becoming Chancellor were that Giffard was made Lord Justice, and William Milbourne James (who turned out a great Judge) Vice-Chancellor. The Attorney and Solicitor-General were Collier and John Duke Coleridge (afterwards Lord Chief-Justice). The place of Vice-Chancellor of the Duchy of Lancaster, which James had held and made important, was at my request (it was the only favour which I asked) given by Lord Dufferin, the new Chancellor of the Duchy, to John Wickens, whose modesty had prevented him from seeking for himself so much even as the rank of Queen's Counsel.

I did not feel the relinquishment of the chief prize of my profession, when it came to the point, as much as I did my rejection by Oxford. It had been virtually made before, and was unequivocally approved (as was also my refusal of the peerage and Judgeship) by all the relations and friends for whom I cared most; it was also recognised in a generous spirit by others as the course which most became me.

One of the earliest consequences of the new situation in which I found myself was that I undertook, at the request of Sir William Heathcote, to communicate with Gladstone, on behalf of some of the heads of the Irish Church who could not do it themselves, on points relating to the terms of the impending Government measure. Sir William Heathcote suggested, in a letter of the 8th February 1869, that I was in a better position than anybody else, "not only to advise upon the merits of the case itself, but to

mediate between the combatants, and to clear up misunderstandings of each other, which he saw were rapidly gathering, so as to aggravate the real differences between them." There had, it appeared, been a correspondence between Gladstone and Archbishop Trench of Dublin; and Gladstone, in writing to Sir William a month before, had manifested irritation and displeasure against the Irish prelates, because they "declined to suggest terms of capitulation." The Archbishop, while offering to consider any proposals which Gladstone might make, could not assume to speak with authority for the Irish clergy and laity; and Gladstone would not allow them to meet in Convocation. They could not open any negotiation on the basis of admitting, or seeming to admit, that the main question must be conceded, without a loss of confidence which might involve the loss of power to organise or to maintain in unity a free Anglican Church, which would be a worse evil than disestablishment and disendowment. "The organisation of such a Church, *really free*, and *really Anglican*, was under existing circumstances the chief point on which to concentrate thought; and next to this, and in subordination to it, the preservation to that free Anglican Church of so much of the endowment as could be saved." The upshot was that the Archbishop of Dublin felt himself unable to enter into private negotiations with Gladstone, directly or indirectly: but it was thought that, if I would confer with him and with Lord Carnarvon, so as to obtain a knowledge of the Archbishop's mind upon the

subject, I might find opportunities of doing good. Accordingly they dined with us, and in consequence of what passed I drew up, and placed in Gladstone's hands on the 11th February, the following memorandum :—

It is not to be expected that any leading Churchman in Ireland will acquiesce, otherwise than under protest, in the disestablishment of their Church upon any terms. But it may make a very important difference, with regard to the prospect of carrying the Government measure without a dangerous struggle and permanent evil consequences, whether the measure is such as the leading members of the Irish Church may be able to advise their people generally to acquiesce in and not actively resist, or one of a different nature. The suggestions which follow are offered in the belief, entertained not without some good grounds (though they cannot at this moment be explained), that, if the Government would propose a measure consistent with them, an important and influential part of the Irish Episcopal Bench, and other leading persons in that Church, would probably take the responsibility of advising their people to acquiesce in it, to avoid worse evils ; and that, if the Government, before introducing a measure embodying these terms into Parliament, thought it proper to require some guarantees to this effect, such guarantees might be obtained.

1. It was stated last year that the leading advocates of Disestablishment would recommend the reservation to the disestablished Church of the churches and residence-houses, with whatever properly appertains to them, and also all modern endowments of private gift. It is assumed that this will be done.

2. It is thought to be no more than a moderate and reasonable expectation that, in addition to these (whatever may be done with the Episcopal and Capitular endowments, and the parochial endowments anterior in date to the Reformation), the *parochial* endowments generally, which have been granted to the Protestant Episcopal Church in Ireland *since* the Reformation, will be preserved to that Church when disestablished.

3. It is assumed that the life interests of present incumbents,

generally, will be saved. But it is thought of importance that this should be done, not so as to discharge them from the condition of spiritual duty on which the tenure of their emoluments now depends, but so as to preserve those conditions of tenure, *mutatis mutandis*, in the disestablished Church; allowing any substitution or modification of duties which may take place with their own consent under the system of the disestablished Church; but providing (of course) against any assumption of a power by the authorities of the disestablished Church, to introduce, against the vested interests of those persons, new conditions of tenure without their consent.

4. It is assumed that some reasonable interval of time will be allowed, before the measure comes into full operation, for the organisation of a system of Church government and discipline, upon the voluntary principle, by some Constituent Assembly, to which the necessary power and freedom shall, during that interval, be given by Parliament.

5. It is assumed that (unless Parliament shall itself undertake the task of determining how a Constituent Assembly of the Church shall be convened and constituted) the Church will be left free, for this purpose, to assemble in a National Synod, or in any other mode which may be practicable according to its existing constitution: and that, in order to give that security which the State may reasonably require for the proper administration of the endowments to be retained, before they are vested in trustees or otherwise for the disestablished Church, it will be a condition that due provision shall be made, in the new system of government and discipline to be agreed upon by the organising Assembly, for the future representation of the laity in Church Assemblies; and that the reserved endowments, etc., shall not vest, according to the new system, till the resolutions of the Constituent Assembly have been approved by the Queen in Council.

6. It is assumed that, while the new system will be founded upon the adoption of the present doctrinal standards of the Church, it will be allowed to be constituted upon the principle of as complete freedom from State control or interference hereafter, in all respects (the Judiciary included), as is conceded by the law of the land to other un-established Churches.

I received no answer from Gladstone to this memorandum (which I know was circulated to the members of the Cabinet), except that, when I put it into his hands, he expressed himself in a manner not encouraging as to the second point, relating to parochial endowments later than the Reformation. It was, on the whole, well that I did not; for Archbishop Trench found it difficult to bring those whom he consulted in Ireland to the point which would have been necessary for any sort of understanding with the Government; and he wrote to me, on the 18th of February, that he was anxious that Gladstone should not then give any answer, good or bad. I did not tell Gladstone so; having mentioned no name to him; so that my memorandum committed nobody. If, therefore, it produced any effect, it did so without any understanding, morally or otherwise binding, either upon the Government or upon the Irish Bishops or any of them. The provisions of the Bill, as introduced not long afterwards into Parliament, were substantially in accordance with it, on all points except the second; and it is far from improbable that it may have helped Gladstone to induce his Cabinet to grant as favourable terms to the Irish Church as he thought consistent with his general purpose; which I have no doubt he wished to do; and which, on the whole, was done.

I explained fully, in the debate on the Second Reading of the Bill, the reasons which, looking upon it as a measure of general Disendowment, and not of Disestablishment only, compelled me to oppose it;

and I voted with the minority. That speech was as anxiously considered by myself, and as well received by my audience and the general public (whether agreeing with me or not), as any which I ever made. No testimony to its effect pleased me better than my brother Edwin's, whose attachment to Gladstone, personal and political, was great. Writing to my wife on the next day (23rd March 1869), he said :—

Only one thing could have given me greater pleasure than to read Roundell's speech of last night—to hear it. . . . I infer from the papers, Liberal and Conservative, that it was a great success. I don't mean for practical effect, for (as he felt) the matter is *decided ;* but there seems to me a consciousness in the Liberal papers that it was not answered. . . . I find, as I have always found, great difficulty in the question itself, and I lean to Gladstone's solution. But two things particularly pleased me with regard to the speech ; one, that it seemed to me a thoroughly satisfactory personal explanation, and I had always thought (and particularly since the Bill was introduced) that it would be extremely difficult for Roundell to make his intellectual position comprehensible—not to say respectable—in the eyes of the contending parties. The other is the repeated protest which the speech contains against State tyranny over religious communities. I am thankful, too, for the advice[1] to the Irish Church with which he closes.

House of Commons, 23*rd March* 1869.

My dear Lady Laura—I cannot resist telling you how vastly I admired Sir Roundell's speech yesterday. There was a chorus of approbation on both sides of the House. Perhaps the best compliment which could be paid to the speech was Coleridge's almost entire silence upon it ; and even Lowe's attempts to reply

[1] It was that they should make the best, and not the worst, of the situation.

were so remarkably below him, that they formed a second tribute to the masterpiece of the debate.—Yours very truly,

JOHN G. TALBOT.

In Committee I did what I could to promote such amendments in the details of the Bill as commended themselves to my judgment, and when it came back from the House of Lords I spoke and voted for an amendment made by that House, which would have devoted part of the surplus arising from the property of which the disestablished Church was deprived to providing the Roman Catholic parish priests with glebes, in preference to applying it to secular uses. But the Government was too strong for anything to be carried in the House of Commons, to which they did not consent. Gladstone made it evident that he appreciated the spirit in which I had spoken and acted by making use of me as a medium of communication with some leading Conservative peers with a view to the adjustment of differences on a few points of detail between the two Houses; and my good offices may have been, in that way, of some practical service.

DEAR LADY LAURA PALMER—I heard something the other day which gave me so much pleasure I cannot resist writing it to you. My wife's Indian sister with her husband were lionising their daughter, and in the House of Commons the policeman in charge pointed out the seats of the Government and a few particular members. At one he stopped and said, "Sir Roundell Palmer sits here. He *is* a man! there's not another like him in this House—no, nor in England either; nor won't be as long as

the world lasts. Why, do you think any other man would have refused to sit on the Woolsack, because it went against his conscience? He is an honest man and a great man; and he's a *good* man. Do you think there is another man in England, working as he does all the week, who would get up early for church on a Sunday morning, and then go and teach a Bible Class? Yes, *he* sits *here*." My sister-in-law said the man became absolutely enthusiastic for the moment, and then returned to his official demeanour and went on the round again. Somehow I feel as if Roundell had been defrauded of his birthright, but the old school thesis holds still: "Qui gloriam spreverit, veram habebit."—Believe me, yours very truly, F. A. FABER.

[I found this among my Mother's papers.]

CHAPTER V

CHURCH BILLS — UNIVERSITY TESTS BILL — MR. GLADSTONE'S BISHOPS — SAMUEL WALDEGRAVE — LORD JUSTICE SELWYN — DEPRESSION AND DISCOURAGEMENT.

1867–1870

THERE were two sessions of Parliament in 1867, in each of which I had the principal charge, in the House of Commons, of measures of some importance to the Church. One of these was a Bill for the increase of the Episcopate in England, whenever, and wherever, on the fulfilment of certain conditions, it might receive the sanction of the Crown. Lord Lyttelton had passed it through the House of Lords in a form which would have given every new Bishop, whose see might be created under it, a seat in that House, in order of seniority, without increasing the number of spiritual Lords. In the House of Commons this was altered, with Gladstone's assent, and with the concurrence of Gathorne Hardy (then Home Secretary), so as to place all the new sees on the footing of Sodor and Man, without any succession to seats in the House of Lords. So amended, the Bill passed the

House of Commons, and was sent back to the Lords in August, just before the end of that Session. Lord Lyttelton wished to carry it through in that shape, but Bishop Wilberforce, and under his influence Lord Derby, objected; and, the Lords disagreeing from what the Commons had done, the measure was lost. The bill since carried, for a like object, by Lord Cross when Home Secretary, provided for the creation of a limited number of new sees only, with succession (as desired by Lord Derby and Bishop Wilberforce) to seats in the House of Lords. All the sees so authorised have now been created, and the want of a further and more elastic power, such as Lord Lyttelton's Bill would have given, may again be seriously felt.

The other measure of which I had charge was for the abolition of compulsory church rates. This, bearing the names of Mr. Gladstone and Sir George Grey, as well as my own, was introduced in the autumn Session of the same year. It was not the first of that kind: another (with, I think, the same names) had been brought in soon after the fall of Lord Russell's Ministry, in July 1866. From the time when the Courts of Law had determined that there was no authority which could impose church rates, or enforce the legal obligation to repair parish churches, without the voluntary consent of a majority of parishioners in Vestry assembled, it became apparent that the evils of such a state of the law were greater than its benefits, in that large number of parishes in which an active and organised opposition to church

rates was carried on. All, however, which could in reason be claimed by nonconformists, was that the payment of church rates should for the future be voluntary, and not, in any case, enforced against dissentients by process of law; and churchmen were entitled, if this were yielded, to have the old machinery freed from impediments, and preserved for use in any places in which it might still be useful. This was accordingly done by the Bill of November 1867, which became law in July 1868. It was not without difficulty that I carried it through Committee against those who aimed, not at relief to nonconformists, but at an unqualified triumph over the Church. I remember a conversation which I had with Gladstone on that subject, early in 1868, in which I expressed my strong sense of the unreasonableness of the manner in which this and other questions affecting the Church were treated by the political dissenters. He agreed with me, I thought, in substance, but he probably looked, even then, upon the political dissenters as necessary allies, not to be irritated or offended, and from whom much that was not reasonable must be patiently endured.

Early in the session of 1869, the new Solicitor-General, Sir John Duke Coleridge, brought forward again, as a Government measure, his University Tests Bill, about which Dr. Pusey had written to me while the Oxford election was undecided. Its object was to put an end to those tests, of parliamentary origin, as to lay degrees and professorships and other academical offices and emoluments tenable by laymen,

which had been left in force by the legislation of 1854. I had to choose between voting with Mowbray, who moved its rejection on the Second Reading, and endeavouring to introduce safeguards for the maintenance, notwithstanding the abolition of those tests, of religious instruction, worship, and discipline in the universities and colleges, according to their statutes. I chose the latter, as the best way of serving the cause which I had at heart; especially as the authors and some of the leading promoters of the Bill disclaimed any intention hostile to the laws and usages which I wished to preserve. I gave notice, with that view, in my speech on the Second Reading, of some amendments which I proposed to move in Committee; which so far commended themselves to the judgment of those on the Conservative side whose objects were the same, that the Bill was allowed to pass through that stage without a division. In the result, all but one of those amendments were accepted[1] by the House, — the exception was a clause by which I proposed that a declaration, similar to one required by an Act of 1853 from lay professors in the Scotch universities, should be subscribed by all professors and tutors and lecturers of colleges, — to the effect that they would not use the opportunities afforded by those offices to teach anything opposed to the divine authority of the Holy Scriptures, or to the doctrine or discipline of the Church of England.

[1] In the same session. The Bill, however, did not pass till 1871, when those amendments which had been accepted in 1869 formed part of it, as introduced by the Government.

Against this, as a "new test," much clamour was raised. The Scotch precedent, it was said, ought to be condemned, not followed; and a great deal was made of the difficulty, real or supposed, of determining what would or would not be a practical departure from such an engagement. A stronger objection might have been, that the statutes of the university and the colleges, at least in Oxford, which my other amendments were intended to keep in force, imposed in substance the same obligation, without requiring any personal promise; which would be sufficient, unless there were some contrary spirit abroad in the place, which, if it neutralised the moral effect of those statutes, might equally neutralise that of any declaration. The declaration was not vital to my purpose, if I could carry the other amendments; and I did not press it, when I found that by doing so I might place them in peril.

The course which I took was approved, not perhaps by all, but certainly by some of the best churchmen in Oxford. Edward Talbot[1] (soon to be Warden of Keble College) wrote on the next day to my wife—

> I feel very strongly that in the present state of feeling it is necessary to be as little obstructive as possible; and I was very anxious that a division on the Second Reading, which would have been purely obstructive and purely useless, should be averted. The enemy (for I must call most of those who support Coleridge enemies) may refuse the terms which are offered; but that does not make it less wise and right to have offered them and so taken the best chance of saving something out of the

[1] Now Bishop of Rochester.

fire. . . . I need hardly say, that I am now doubly glad that I did the very little I could at the time of the Election. I felt last night that that speech ought to have been made by the member for the University.

In the same year an unusual number of bishoprics fell to Mr. Gladstone's disposal. Walter Kerr Hamilton, Bishop of Salisbury (one of his most intimate friends), died in the summer, and was succeeded by Dr. Moberly; who, to other qualifications for the office, added that of close friendship and association with Mr. Keble (to whose school of opinion Bishop Hamilton belonged), and as near an approach to Mr. Keble's views as was consistent with his own cautious and critical temper of mind. Bishop Sumner, a little later, resigned Winchester, to which Samuel Wilberforce was translated; and John Mackarness, son-in-law of Sir J. T. Coleridge,—who, without the genius or versatility of his predecessor, had the gifts necessary for continuing his predecessor's work and governing the diocese in the same spirit,—succeeded to Oxford. Richard Durnford, not so well known then as he is now, who had been a private tutor at Eton when Gladstone was a schoolboy, was appointed to Chichester. To balance these appointments (all good, and on the High Church side), four men, generally supposed to incline towards the "Broad" school, were appointed to other Sees,—Lord Arthur Hervey to Bath and Wells; Harvey Goodwin to Carlisle; James Fraser to Manchester; and Frederick Temple to Exeter. In the transition from Phillpotts to Temple, there was more abruptness and less con-

gruity than in the other cases; and strong demonstrations were made against that appointment. Dr. Pusey took it so much to heart, that it produced more estrangement on his part from Gladstone than anything else had done. Yet the sole ground of objection to Temple was, that he was one of the contributors to the book called *Essays and Reviews*. With the Essay which he contributed, taken by itself, it was hardly possible for a fair mind to find fault: but men insisted upon reading into it the spirit and ideas of other parts of the book. Nothing could be less reasonable; for he was neither Editor, nor in any way responsible for what anybody else had written. The position in which he was placed, between his friends (who could not all be exonerated from that responsibility), and his duty to the Church, was by no means an easy one; and perhaps he was not skilful in his endeavours to guard himself from misconstruction without censuring them. But he said enough to make it plain to reasonable men, that some of them had views with which he did not agree; and that no inference unfavourable to his promotion could justly be drawn from the accidental association of his Essay with theirs. He had not long filled the office of Bishop, before his sterling qualities,—impartiality, manly good sense, freedom from eccentricity of thought or action, and consistent Christian spirit,—won for him the respect of all men; as became apparent, when, fifteen years afterwards, he was translated, with general approval, to London.

One of the vacancies, which Gladstone then

supplied, was made by the death of my brother-in-law, the Bishop of Carlisle, on the 1st of October 1869. Archbishop Tait (his tutor at Oxford and his attached friend through life) visited him, just in time to offer the commendatory prayer upon his deathbed; and on the 8th of October his body was laid in the churchyard of Carlisle Cathedral, a vast concourse attesting the sympathy of his people, and their love for his memory.

Samuel Waldegrave entered at Balliol when he was eighteen, and took a double-first in classics and mathematics, and he was afterwards a Fellow of All Souls. He was ordained, and in 1845 married Jane Anne, daughter of Francis Pym of the Hasells, Bedfordshire, by Lady Jane Melville,[1] and accepted from his college the Rectory of Barford St. Martin, near Salisbury: to which was added, at a later date, a Crown canonry in Salisbury Cathedral. In 1853 he preached the Bampton Lectures at Oxford. He held decided opinions upon some controverted theological questions, adhering from his youth upwards, without any fluctuation or wavering, to the party called Evangelical; and he maintained those opinions with constancy and firmness. But he was not a man who at all loved controversy; and he expressed himself, if strongly, always gently, and with reverence. He neither thought nor spoke unkindly of those from whom he differed; and he was not incapable of sympathising and being at peace with all who loved the Lord Jesus Christ in sincerity, to whatever theological

[1] Sister to the 8th and 9th Earl of Leven.

schools they might belong. Nothing made any difference in the religiousness and simplicity of his manner of life; and it was impossible to visit him without going away refreshed by the breath of a purer and more spiritual atmosphere than is always to be met with, even in the homes of good men. His heart was full of the Holy Scriptures, which were his principal study: and they overflowed into all his conversation; which, without any constraint, effort, or affectation, was constantly turning upon the Word, and Work, and Will of God. It is difficult to conceive more close and affectionate relations between a pastor and his flock, or a more successful parochial ministry, than existed in his time at Barford.

In the same month of October Lord Derby died. I was among the first to declare for Lord Salisbury as his successor in the Chancellorship of Oxford. Oxford also lost in that month one of her finest scholars and most religiously minded teachers, John Conington, Professor of Latin, to whose professorship my brother Edwin succeeded in the following year.

The Law too lost, in 1869, one of its most conspicuous men. On the 11th of August Charles Selwyn died, having been Lord Justice for less than eighteen months. He was the youngest of a remarkable group of brothers, ornaments in their younger days of Eton and Cambridge. William, the eldest (Canon of Ely), was great as a scholar. George, Bishop of New Zealand and Lichfield, was a man of Apostolic gifts and virtues, an organiser and ruler of churches. Charles was a man of rougher fibre than

either of them : a sturdy Englishman, manly, straightforward, and practical ; and his death, in the strength of his faculties, was a great loss.

I was in some doubt whether the place of Lord Justice might not again be offered to me. The newspapers suggested, and some of my professional friends (particularly Arthur Hobhouse) urged it upon me, thinking that I might best serve the public upon the Bench, and that it practically rested with myself whether the offer should be made or not. After what had passed, it was hardly likely to be made without some indication from me or my friends, that if made it would be accepted ; and, in fact, it was not. The place was kept vacant for some months, till it might be seen whether the Judicature Commission would suggest any changes affecting it, and it was then most worthily bestowed upon Sir William James, Sir James Bacon succeeding him as Vice-Chancellor.[1]

I was at that time tired and dispirited, wishing for rest, and contemplating retirement from the Bar after a few more years. I discussed the reasons for and against the acceptance of the vacant office, if again proposed to me, in a letter to my wife.

There have been no letters about the Lord Justiceship ; so I have had plenty of time to think about it ; and the conclusion I am disposed to come to is, to remain for the present as I am,

[1] In the debates on the Bankruptcy Bill of that year, I had urged that some such arrangement should be made ; Sir James Bacon was not only a very popular man, but bankruptcy was his specialty ; and he united the office of Chief Judge in Bankruptcy with that of Vice-Chancellor.

even if the offer is made. I say, "even if" etc., because it is certainly not improbable that two refusals may be considered decisive, although there has been a change since in some circumstances not immaterial. The considerations which induce me to think it will be best to remain as I am (as well as those leading the opposite way), are in the main domestic. On the one side there is, no doubt, the acceleration of that period of comparative rest to which I have of late been looking forward as not very remote, supposing my life to be prolonged. On the other, there is the fulfilment of my own previously settled purpose, of continuing for three years more in my present position, with its work and duties on the one hand, and its pecuniary advantages on the other, unless in the meantime some manifest call of duty should intervene. I do not think that, under all the circumstances, a repetition of the offer of the Lord Justiceship would be such a manifest call of duty; and the convenience of getting through our building is so evident, that I think it makes a little more patient labour not only wise and reasonable, but very nearly a duty. If my life is spared, the probability of a vacancy happening at the Rolls, either within or very soon after the end of the three years, is so great, as to make me feel that I am not in any serious risk of passing by a *last* opportunity of high judicial office. It is true, that the work at the Rolls is, as I have told you before, rather greater than in the Court of Appeal; it is not, however, to be compared with my present work; it would not keep me in London for a greater part of the year than would be necessary in the other case, and it has some advantages of its own, which make it, upon the whole, more attractive in my eyes. Then, as to Parliament, I am already recovering a little from the feeling of depression and discouragement left upon me by the results of last session, sufficiently so, at all events, to feel satisfied that I had better not let my course be decided by that feeling. The present Parliament will certainly last the next three years; and our friends at Richmond will not be expecting any vacancy, though it might not be unwelcome [1] if it happened in a legitimate

[1] Lord Zetland had two nephews (the elder his heir-presumptive), one of whom he might naturally wish to be able to bring into Parliament for Richmond.

way. The present Ministry, too, is pretty sure to continue; and, except in the matter of the Law Courts, I do not know why I should not be in agreement with, and even useful to them, and perhaps useful to the country. If I have been unable lately to exercise much influence, I do not think I have lost many people's goodwill; and, if one ought to look to the indications afforded by other people's opinions, I should hardly suppose that, according to that test, the time for my retirement from the House of Commons has yet come.

. . . . . .

The call, one way, is *Rest;* the other way, *Persevere.* If I were conscious of any failure of strength or health, I should listen to the first; but, as this is not the case, I think my present duty is to persevere.

We remained as we were; and, almost exactly at the end of the three years during which I had determined to persevere, the providence of God brought again within my reach the higher prize of my profession, which in 1868 I had been compelled to forego. In the meantime, the works at Blackmoor, cottages and schools, proceeded; and, after the Christmas holidays of 1869-70, we began to build, on the same site on which we had lived from the summer of 1866, a larger house for our future home. Of which (as of our other buildings) Mr. Waterhouse was the architect.

[It is hoped that this extract from the *Times* of 6th November 1871 is not out of place as a sequel to the letter above.]

For some years past Sir Roundell Palmer has occupied an almost unique position both in the legal and political world. We believe there is no other recorded instance of the Chancellorship being declined by a practising barrister in full vigour, or of its being declined by any person whatever on conscientious

grounds. By this magnanimous act of self-denial Sir Roundell Palmer won the deserved respect of all parties in the country; but long before this he had succeeded, as few lawyers do, in gaining the ear of the House of Commons, while he maintained an undisputed lead at the Chancery Bar. The importance attached to his authority on Constitutional points was signally manifested last Session in the Debate on the Alabama Treaty, and, still more, when Her Majesty's summons to "her faithful Commons" was delayed that Mr. Cardwell might read Sir Roundell's letter on the Royal Warrant abolishing Purchase. . . . Had Sir Roundell been actually a law officer of the Crown, he could not have rendered the Government more efficient assistance than he did in the wearisome discussions on the Bankruptcy Bill. In moulding the provisions of the Irish Church Bill after the principle of Disestablishment had once been adopted, and in resisting Mr. Miall's sweeping motion against the English Church, his voice was far more powerful than it could have been had he spoken as a subordinate colleague of Mr. Gladstone instead of as a judicious ally.

CHAPTER VI

FIRST IRISH LAND ACT

1870

The Irish Land Act of 1870 has had consequences, which few either of its supporters or of its opponents imagined when it was passed. It was a new point of departure in the policy of this country towards Ireland. It was not without difficulty that even so strong a Government as Mr. Gladstone's succeeded in carrying it through the House of Commons, in the form in which (with a few amendments by the House of Lords) it became law; and it may be said with certainty that it would never have passed if what was to follow had been then foreseen.

Mr. Gladstone, when canvassing South Lancashire in 1868, had pledged himself to deal with three subjects affecting Ireland—the Church, the Land, and Education. With the Church he dealt in 1869; with Education he attempted to deal in 1873; the Land question occupied most of the session of 1870.

It had taken many years to ripen that question. A full and elaborate inquiry into the law and practice in respect of the occupation of land in Ireland, by the

Royal Commission of which Lord Devon was Chairman in 1843, had been followed by several well-meant enactments—the Incumbered Estates Act of 1848,[1] the Act for the Enfranchisement of leaseholds perpetually renewable,[2] and the Act of 1860, which treated contract as the sole foundation of Irish land tenure.[3] But none of these measures produced the results hoped for; and one[4] of them, by substituting for a class of proprietors, who, though impoverished, had strong local attachments and understood the circumstances of the country, richer men who bought land in Ireland merely as an investment, introduced evils, greater perhaps than those which it was meant to cure. All those attempts to improve the agrarian system of Ireland were founded on the assumption of the practical identity of Irish and English tenures. On the other hand, the landlords, in Ulster generally, and in some other parts of Ireland, had laid the foundation of a system of dual ownership, by encouraging the growth of customs, the effect of which was to create saleable interests of substantial value in the continued occupation of the land, both when the legal tenure of the occupiers was most precarious (as in the case of yearly tenants), and when it seemed to be most definite, as in the case of expiring leases. It is true that this dual ownership rested upon sanctions of imperfect obligation, moral equities not recognised by law; but in a self-asserting and self-reliant population, such as that of Ulster, a sense

[1] 11 & 12 Vict. cap. 48.
[2] 12 & 13 Vict. cap. 105.
[3] 23 & 24 Vict. cap. 154.
[4] The Incumbered Estates Act.

of right which no legal theory could suppress, and which could not practically be disregarded, took strong root. The impossibility of setting up against it dry law received illustration even in England, from the case of a large manufacturing town (Huddersfield), built on land belonging to a single owner, and let out upon written agreements, with an understanding (not reduced into writing, but customarily acted upon) that there would be a species of tenant-right going beyond the express contract. The question whether in that town the written agreements could be controlled or extended by the custom of the estate was brought to the test of judicial decision. Vice-Chancellor Stuart decided, on what he thought equitable principles, for the unwritten custom, and in the House of Lords Lord Kingsdown agreed with that judgment; but it was reversed, the majority of the Law Lords holding that the express contract must prevail.[1] The result was that the landowner found it necessary to obtain a Private Act, regulating for the future the tenure of the occupiers on his estate, upon terms of compromise between his own legal title and the moral equities of the tenants.

During a long series of years, Bills were brought into the House of Commons, first by Mr. Sharman Crawford, and afterwards by Lord Naas,[2] to give legal force to the Ulster customs: none of which

[1] *Ramsden* v. *Dyson* (1865):—English and Irish Appeal Cases, vol. i. p. 129.

[2] Afterwards Earl of Mayo, and Governor-General of India.

passed; but the support which they received from Conservatives as well as Liberals made that question only one of time.

In other parts of Ireland, where there were no such customs, the proportion of small to large holdings was extremely great; with the consequence that it did not suit the landowners generally to be at the cost of erecting buildings or executing other improvements on the smaller farms, all which it left to the occupiers to do as well as they were able, and in their own way. The market for those small farms was regulated by no other economical law than a constant insatiable demand for land by peasantry of a low order; of which the natural effect was to raise rents, in many cases too high, without any intentional injustice on the part of the landowners or their agents; so leading to long arrears and consequent evictions. All these were circumstances to which there was nothing parallel in the English agricultural system; and to these was added the want of any outlet in Ireland, except foreign emigration, for those who, having been accustomed to seek their living by agriculture, might be dispossessed of their farms.

An inquiry into the actual state of the agrarian question in Ireland was prosecuted during the Recess after the session of 1869 by the *Times* newspaper, with an effect hardly less than if it had been set on foot by public authority. The reports of the "Special Commissioner" employed for that purpose, Mr. O'Connor Morris (afterwards an Irish County Court

Judge), attracted much attention: they pointed to legislation of the kind towards which the counsels of the Government were tending.

My cousin, Charles Roundell, was then private secretary to Lord Spencer, Lord-Lieutenant of Ireland. From him I received a letter, dated the 21st of November 1869, directing my attention to an article which had appeared a few days before in the *Times*, as containing "a satisfactory basis for the solution of the land question in Ireland." It was, he said, founded upon the exceptional state of Ireland; it recognised the necessity of providing a check upon capricious or unjust evictions, whether direct or indirect in the shape of an undue raising of the rent; and it looked to the instrumentality of a public tribunal, as a necessary medium between landlord and tenant. He went on to develop those points, in a way from which it was not difficult to gather the general character of the forthcoming Government measure: adding, that it would be necessary to take care "that no present legislation should stand in the way of things gradually working round to strict economical principles, and an ultimate general adoption of a state of contract." "*Fixity of tenure* was a wild parrot-cry, which would be scouted by every reasonable man; the landlords must come to terms; but no one would ask them to be parties to converting themselves into mere rent-chargers."

These indications of what was coming led me to give as much time as I could, before the session of 1870, to a study of all the materials within my reach,

which might enable me to understand the practical conditions of the question. In this I was assisted by communications from some of those best informed about it; among others, by Mr. O'Connor Morris, who, in sending me (on the 3rd of February 1870) a reprint of his reports as "Special Commissioner" for the *Times*, said, that "he thought the issue of the question might depend a good deal upon the line I took."

I did not see any difficulty of principle which need stand in the way of any modification of the system of land tenure in Ireland for the good of the Irish people generally which could be reconciled with justice to the persons and classes immediately concerned. I had never been one of those (if such there are) who make an idol of property, as if legislation altering the conditions of its enjoyment were beyond the moral competency of a well-governed state. In early youth I wrote to my Father:—

> Rights of property, such as they exist among us, seem to be incidents of civil society, created as well as defined by the supreme authority of the State, and subject to the control of that authority throughout all time, *de jure* as well as *de facto*. To restrain the exercise of this controlling power, there is public policy on the one hand, and distributive justice on the other. Justice forbids us to break faith with individuals and inflict unmerited suffering upon them, by depriving them of those advantages of which they have been guaranteed the possession, unless when they have forfeited their claim to protection by their own default, or when you tender an equivalent compensation, or when it is absolutely necessary upon the paramount principle of self-preservation. . . . Circumstances will be very rare indeed, under which such a power ought to be used; and it

cannot be denied, that it is very politic and expedient to invest the rights of property with as much sanctity as possible in the estimation of the mass of men. But still, I cannot admit that they are always, in theory and on principle, inviolable.

Lord Dufferin wrote to me at the beginning of 1867, discussing the different schemes of legislation for the benefit of Irish agriculture which had been down to that time propounded, and asking for my opinion on the question, "how far, consistently with the recognised principles of English law and equity, can we go in controlling a landed proprietor in the management of his property?" I referred him to the history of copyholds, the abolition of feudal tenures, and compulsory powers under Railway and similar Acts, as more or less in point, so far as the abstract principle went. The first was an example of custom passing into law; the second, of a change by the legislature of conditions of tenure, inconvenient and unsuitable to a given state of society: the third, of appropriations of private property to public uses upon terms of fair compensation. I could give no better answer to his question than he might infer for himself, from such examples of what had in ancient and modern times been done without any shock to the public conscience, or any demoralising effect upon the general course of government by law.

The Bill introduced by Gladstone had four main objects in view, which might be regarded as its principles. The first was to give the force of law, wherever they prevailed, to the Ulster and similar customs. The second was to put a check on arbitrary

evictions, by enabling a court to award compensation to an evicted tenant (except in certain specified cases) according to a scale and within limits defined by the Act, subject to all just claims for rent due, deterioration of the land, and other equities of the landlord,—eviction, in the cases not excepted, being described as the "disturbance" of the tenant in his holding by the act of the landlord; and the compensation being "for the loss which the Court should find to be sustained by him by reason of quitting his holding." The third object was to secure to outgoing tenants (whether going out voluntarily or otherwise), within certain limits and on certain conditions, compensation from the landlord, in respect of all improvements on their holdings, made by them or their predecessors in title. The fourth was, to make it impossible for tenants below a certain annual value[1] (originally fixed at £100, but afterwards reduced to £50) to renounce, by any form of contract, the benefit of the compensation clauses; those whose holdings were above that value being permitted to do so. So far, however, as related to compensation for "disturbance," as distinguished from compensation for improvements, the restraint on freedom of contract below the specified value was to be temporary. It was to continue for twenty years only from the 1st of January 1871, unless Parliament should otherwise determine.

No objection was made to that part of the Bill which related to the Ulster and other customs. And it was evident, from the general course of the debate

[1] Rateable annual value, under the Valuation Acts.

on the Second Reading (which passed without a division), and particularly from a powerful speech by Mr. Kavanagh, member for Carlow — a remarkable and influential man, himself a large landowner—that, subject to that fair consideration of questions of detail which the importance and novelty of such legislation seemed to require, and which the Government appeared to encourage rather than deprecate, the best class of Irish landowners was ready to assent to the principle of compensation, both for "disturbance" and for improvements.

Looking at the Bill as a whole, and reserving myself as to its details, I thought the Government had been successful in making their measure efficient without substantial injustice to individuals or classes; and I spoke on the Second Reading in that sense. I saw no further than others into the future; unless it were, perhaps, that, in order to prevent ulterior developments which every one then deprecated, and no one more strongly than myself (though they were to follow in no more than eleven years, under a Government in which I was Gladstone's colleague) it appeared to me to be of importance that those parts of the Bill which had a retrospective operation, and those which restricted freedom of contract, should be kept within limits not exceeding the necessity of the case. On one point I held the same language then, from which I have never since deviated; that the effective repression of crime and disorder was necessary for the success of any such measure; that it would be "as worthless as waste paper," unless

followed by measures to vindicate and enforce the law. "Nothing on earth," I said, "should induce me to support this Bill, but my firm persuasion that the Government are as much determined in regard to the steps which remain to be taken for the purpose of protecting life and property in Ireland, as they have shown themselves to be in producing these conciliatory measures."

When the third clause, relating to compensation for "disturbance," was reached in Committee, some questions of detail about which I cared arose. All the alterations in the Bill which the Government had down to that time announced were in the tenants' interest; I was anxious to see the balance redressed. Speaking upon that clause, on the 4th of April, I said, that its retrospective operation, which did undoubtedly interfere with existing rights of property, could only be justified upon grounds of high political necessity, and some reasonable expectation of benefit to the public, and to the classes affected by it. It was founded, as I understood, upon the principle, that protection ought to be given to a class of small tenants, who could not be trusted to contract freely for themselves. If so, the necessity for interfering with existing rights could not extend beyond holdings of a certain value, nor to *bonâ fide* leases of definite duration. But the clause was made to apply to all existing tenancies up to £100 a year rateable value, except leases for thirty-one years; with no other difference, than that the number of years' rent which might be given as compensation for disturbance was

to be less, as the rental was greater. This, as the Bill then stood, was consistent with making the same amount of rateable value, £100 a year, the limit above which freedom of contract was to be allowed, and below which it was to be excluded. But it was impossible to suppose that the tenants of lands valued at from £50 to £100 a year were generally men who could not be trusted to contract for themselves. Both the limit above which free contract was to be allowed, and the retrospective operation of the clause upon existing tenancies, ought to be reduced to the lower of those figures. Nor could I see any sound reason for taking thirty-one years as the *minimum* duration of a lease, at the end of which the landlord was not to be treated as a "disturber" if he resumed possession of the land. Why should not other leases of less length, such as were common in Scotland or in England, have the same effect? On these points Mr. William Fowler, the Liberal member for the borough of Cambridge, had given notice of amendments, in the objects of which I declared my agreement.

What I said met with much concurrence, on both sides of the House, and out of it; Lord Dufferin (himself in office) wrote to me on the next day, expressing his approval. The Government consented to reduce the limit below which free contract was to be excluded, from £100 to £50 rateable value; but they retained the £100 limit as to existing tenancies; making the Bill, as it seemed to me, inconsistent with itself in a way in which it had not been before; for

as between parties who could be trusted (as was now admitted) to contract for themselves in future, there could be no sound reason for interfering with contracts already made. Gladstone, however, held out some expectation that my views might be (at least partially) met; which placed me in a difficult position, when Mr. Fowler took a division upon his amendment as to the duration of those leases at the end of which the landlord might resume possession without being accounted a "disturber." I could not vote against it, without a more definite understanding with Gladstone than had been arrived at. On the other hand, to vote for it would have put an end to all hope of my prevailing with him to yield more than he had already yielded. I was reduced to the necessity of taking a course which, after a man has publicly expressed his opinion, can seldom be justified,—that of leaving the House, when the division took place, without voting.

At this (which was really a concession to him, not made without some violence to my own self-respect), Gladstone was offended. It was always one of his defects, to have no just sense of the proportion of things. This made him irritable under the most friendly criticism, — disposed to exalt details into principles, and to magnify much beyond its value every concession which he could be induced to offer. It was difficult to get him fairly to consider objections upon their merits, or to seek to remove them in substance, and not only in words. Cardwell reported to me that he said, I must be prepared, if I insisted upon amendments which he was unwilling to make, to take

the responsibility of carrying on the Government. He spoke of me in the House, on the evening on which it rose for the Easter recess (when I was not present), as "offering a dangerous opposition to important parts of the Bill." Some of the supporters of the Government in the press represented me as "a powerful candid friend,"—"an independent member of Cabinet rank, who was not in the Cabinet," with whom some arrangement must be made, if the Bill was not to be stopped.

This was by no means a comfortable position for one whose object was not to defeat the measure, or to embarrass the Government; but who nevertheless wished to do his duty to the country as well as he could. It led to an anxious correspondence.

On the 9th of April, having heard from a common friend of his displeasure at my not voting against Mr. Fowler, I wrote to Gladstone, explaining my view of what had previously to that division passed between us; and saying:—

> My position is that of having publicly expressed certain views, held by a considerable number of your supporters, to whom nothing can be less acceptable than to find themselves at variance with you: in doing which, I conceived myself to be contributing, to the best of my power, to the public interest, and to be using a freedom which all members of the House, without reference to party, had been (as I thought, rightly and wisely) encouraged to use, as to the details and practical limitations of a measure, which we are all agreed in thinking one of difficulty as well as importance.

He replied,[1] not differing from me as to the sub-

[1] 9th April 1870.

stance of our previous communications; but urging upon me the responsibility of those who, in such great passages of political life, whether consciously or not, become "the means of bringing into a focus the scattered elements of disapproval." He spoke of the task which the Government had undertaken with respect to Ireland as "tremendous"; and of a "freedom" as to the means which they might think necessary for its accomplishment, without which it would be a breach of faith to the country to attempt to carry on the work.

I rejoined, that I was alive to the responsibility of which he spoke; "but there was another responsibility, for the character and consequences of the legislation which they sanctioned (especially in matters of this gravity), from which the members of Parliament could not be entirely relieved by any claim of confidence which might be made upon them, even by the strongest Government. And the responsibility of taking false steps, in such a case, was not one-sided. The minister who could throw up such a measure, when Parliament had no wish to displace him or to defeat the measure or to refuse him such support as became independent and conscientious men, for reasons not really adequate to justify so extreme a course, would not, I felt sure, stand justified in his own dispassionate judgment. If, upon such questions as these, the *sic volo* were to stand for a reason against the real sense of the majority of the House, the strain upon those who had honest opinions of their own might easily become too great."

Of the points into which I entered in the debate of the 4th April, two,—that as to the retrospective operation of the clause giving compensation for "disturbance" upon existing tenancies above £50 yearly value, and that as to the application of the same clause to *bonâ fide* leases for less than thirty-one years,—were in controversy between us when these letters were written. And there was a third point, upon the clauses as to compensation for improvements made by a tenant or his predecessors in title. They established, as they then stood (subject to some conditions and limitations which I thought insufficient), a general rule of presumption, to be acted upon in the Land Courts, that *all* improvements had been so made, unless the contrary were shown. But, although on the greater number of estates, and with respect to most of the smaller holdings, this presumption might be in accordance with the truth, it was certain that on some estates, and particularly on the larger class of holdings, improvements of no small value had been made by landlords. It was obvious, that nothing could be more unjust than to make the landlord pay an outgoing tenant for improvements which he himself or predecessors in title had made, and of which—having been made under a state of law which did not admit of any such claim—no evidence might have been preserved. Mr. Herbert of Muckross, a Liberal member of the House, who was very anxious upon the subject, told me that this was his own case. I thought that, to prevent consequences so unreasonable arising from a general inversion of the ordinary

burden of proof as to improvements made before the change in the law, every precaution ought to be taken; both by excluding claims for permanent improvements so remote in point of time as to make it unlikely that evidence concerning them could be in existence, and by enabling landlords, by registering (with notice to the tenants, and giving them the opportunity of being heard in opposition) improvements made by themselves or their predecessors in title, to throw upon the tenants the burden of disproving such registered claims.

On these points, those which related to the retrospective operation of the Bill were questions of principle: that as to future leases could hardly be so regarded.

Gladstone wrote to me again, on the 11th of April, treating the former as open to further consideration, the latter not; and on the 17th I sent him, from Blackmoor, a memorandum entering fully into the points in question. In the letter which accompanied it, I said, with reference to what he had called my "dangerous opposition":—

"I was not in the House (and I am rather glad I was not) when you spoke of me as offering a 'dangerous opposition' to 'important parts' of the Bill. That I think the points important, is certainly most true: but I have not yet been able to see how the maintenance of the view of them opposite to that which I take is, or can be, important to the scheme and objects of the Bill. I should much understate my feeling on this point, if I only said that their

importance to the Bill seemed to me to be in the inverse ratio of their importance in other respects: for, if the view which I take is not wholly unsound (and it is one depending mainly upon facts which hardly can be, and on principles which are not, in controversy), it is hardly less important to the perfection and success of the Bill, than to the cause of justice and good government, that these matters should be dealt with in the best and safest way possible. I could not, therefore, and did not, when offering my *bonâ fide* opinion on this subject, imagine that I was doing anything dangerous to the Bill or the Ministry: because my conscience was entirely clear of any such purpose; and my confidence in your justice, moderation, and wisdom was such, that I did not doubt you would readily accept and act upon such suggestions, as far as they were reasonable, and would even be willing to defer upon the subject of them,—if yourself not entirely convinced,—to what might appear to be the sense of the majority of the House. It may be, that a man whose convictions disable him from being silent or yielding, when he thinks justice or other great interests are placed (however unintentionally) in peril, and who—if he has any public position or duty at all—must have that of maintaining faithfully, as he understands them, the principles on which property and society are based,—would be better out of the House, and apart from politics, than in it. I do not, however, believe that you think so; and, if not, you will not judge me unjustly, whatever my sense of duty may

lead me to do. God knows, that in this most serious business I have desired to help and not to oppose you; and so I do still."

Gladstone, acknowledging this letter briefly on the 20th of April, explained that in speaking of my "dangerous opposition," he had meant to refer not to "intent," but to "tendency and effect"; and, after considering my memorandum, he wrote again[1] saying, that with respect to the two subjects affecting the retrospective operation of the Bill, which I had described as questions of principle, he thought it might be the duty of the Government, notwithstanding all that had taken place, to offer or accede to some amount of concession: but that it was otherwise as to the third, relating to leases, which I had described as one of policy. He spoke with warmth of some arguments from humanity, from history, and from policy, which might have been urged, but from which he had refrained; seeking (he said), by "an extreme reticence and forbearance," to obtain a large and liberal treatment of the measure. He regarded too strong a Bill as a less evil than one too weak, and felt sure that, if the Government were driven to refuse to pass too weak a Bill, one too strong would pass instead of it. In that case, his own conscience would be clear: he had firmly resisted the demands for perpetuity of tenure, valuation of rents, and the extension of the Ulster custom throughout Ireland; against none of which Disraeli had said a word. He thought that, under these circumstances, the proposals of the

[1] 21st April 1870.

Government (in their essence) became promises. He complained, that the rank and file only of the opposition came from the other side, and that they were "led and officered" from the Liberal party. He gave me credit for sincerity: but he heard from me with jealousy, arguments which, if I were responsible for the government of Ireland, he would be content to leave me to dispose of. This is the substance of a letter of considerable length and much frankness, which practically determined my conduct. Our correspondence closed with my answer to it, on the 22nd of April, which was:—

"You will not, I am sure, be surprised, if I think that some things which you have said are exaggerated, and hardly quite dispassionate: but, if there is any foundation for this, I know it is due to that strong sense of responsibility, and that ardent desire to do good according to your own view of your duty, which no man more admires and respects in your character than I do myself. Nothing, I can assure you, would gratify me more, than to find an end of difference with you on the details of this question, on which I have from the first appreciated your course as a whole. I could yield with a clear conscience (if it were only in deference to your authority) on the point which I regard as a question of policy only, if my difficulties on the other two points could be met in any substantial way."

The Duke of Argyll added the weight of his authority, with reference to the point as to leases, on which concession was refused. He wrote to me, on

the 23rd of April, explaining his reasons; and saying: "I dread the loss of the Bill more than I can say; and I, as a landowner, am satisfied with the concessions made. I do not think Gladstone can safely do more."

I had done what I could. I was not willing to lend myself to any party objects of the Opposition, or to be their instrument in displacing the Government or wrecking the Bill. I felt that I had no option but to accept what the Government was ready to yield on the points to which I attached most importance, and on the other point, which they had brought themselves to think vital to their measure, to give way. When the House proceeded with the Bill in Committee after Easter, I acted accordingly. Nor did I find it difficult to defend myself, when, on the 6th of May, Mr. Plunket described me as "mesmerised." "There is," I replied, "neither mystery nor mesmerism in the course which I have found it my duty to take. It has been dictated by the principle, the claims of which are imperative upon every man,—that of endeavouring to get what he can, and of taking that which he is able to get." What I actually got was a modification, of some value, of the conditions and limits under which a legal presumption was to be established in favour of the tenant as to improvements; and the acceptance[1] of

[1] I told Lord Cairns that I did not move it myself, only because I had obtained, not without difficulty, concessions which I did not wish to place in peril by proposing other things which might lead to difficulties in the House against the will of the Government; but

a clause, introduced by Lord Cairns in the House of Lords at my instance, by which a landlord was enabled to register (so as to exclude the presumption against him) improvements made by himself or his predecessors in title. No other substantial alteration was made in the Bill.

To the Hon. Arthur Gordon

6 Portland Place, 10*th April* 1870.

. . . When you come you will find us in a state of great perplexity and embarrassment about the Irish Land Bill. We started well, with fair offers (and I have no doubt, sincere intentions) on Gladstone's part, to listen to suggestions of amendment *bonâ fide* made with a view to the improvement of the Bill: which, though satisfactory in a general view, appeared to many on both sides of the House to require great care and caution in the settlement of some of its provisions, which (unless duly limited) might be of dangerous consequence, both in Ireland and elsewhere. It fell to my lot (not by concert with any one, but in the natural course of things, according to my own notions of duty), to give form and expression to these views: and, to a certain extent, my suggestions were fairly met by Gladstone. But, for some reasons which I am unable to understand, he seems determined to limit his concessions in a way which fails to satisfy the principles on which they are asked for; and having formed this resolution, he stands at bay, and is disposed to make an unreasoning acquiescence, by the majority of the House, in his decision on these points, a condition of going on with the Bill, and (I suppose) with the Government. I never knew a stronger illustration of a saying of Archbishop Whately's about

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that they had almost admitted that they would accept such a clause from the House of Lords, if the leading provision as to the presumption concerning improvements were allowed to remain. The Lords' clause was agreed to in the Commons on the 22nd July, after some little show of resistance.

him, when he was a man comparatively little known, and which appears in the Archbishop's *Life*, *àpropos* of his (Gladstone's) book about Church and State: viz. that his mind is a sort of *cul de sac* without a thoroughfare. But what will come of this, I really do not know. As far as I can judge, the *opinion* of almost everybody in the House, who thinks at all about the matter, is against him on the points in controversy; and no intelligible explanation of his pertinacity about them has been given. The other night, on a division in which I took no part (justifying myself by a thin distinction, as to the precise issue raised by the particular motion), after he had represented the situation as the gravest possible, the majority sank to 32; about 10 or 12 Liberals leaving the House as I did, rather than vote against him: and, upon some of the points which remain, there will be much greater difficulty in avoiding an adverse vote. It is quite on the cards, that he may one day find himself in a minority, after having used similar language: and then, what is to happen? It makes me very anxious indeed; the more so, as he is very sore with me personally, and presses me with the responsibility of whatever I may do: which, you may believe, I feel sufficiently, without any pressing. . . .

R. PALMER.

CHAPTER VII

ELEMENTARY EDUCATION ACT

1870

"GREAT power," said Sir James Kay Shuttleworth, writing to me on the 28th of March 1870, "has been confided to Mr. Gladstone, to accomplish objects which have hitherto baffled statesmen." This he said with reference to the other principal measure of that year, for which he had himself done much to prepare the way—a measure not less important than the Irish Land Act, and more successful in its results—the Elementary Education Bill. Mr. Forster, Dr. Arnold's son-in-law, who had the conduct of it, was a large-minded and really liberal man, of strong masculine character, honest as the day, with a rough outside and a generous heart. Brought up as a Quaker, he had not kept up his connection with that religious body, but he was not formally identified with any other, and was disposed to be just to all. He understood the danger to liberty of substituting generally, in popular education, State control for voluntary effort; and he desired that religious

influences should have as fair and free scope as possible, consistently with impartiality towards their different forms. His Bill for making the benefits of Elementary Education universally accessible was founded upon these principles. There were to be Board Schools, established and supported by local rates, where they were necessary; but they were not to be forced upon places where good voluntary schools existed, with which the people were satisfied. Religious instruction might be given in them, if the Boards elected by the ratepayers thought fit. To voluntary schools complying with certain rules, State recognition and aid were to be given impartially, without any interference with the freedom of religious teaching, except as to children whose parents or guardians desired to have them exempted from it.

In support of this Bill I took an active part. At the outset of my public life I had been jealous, beyond the bounds which commended themselves as reasonable to my later judgment, of the influence of the State in this matter of popular education. My maturer opinions found expression in the discussions of 1870.

The second reading of the Bill was opposed with some acrimony by that section of the nonconformists whose hostility to forms of religion differing from their own seems to exceed their zeal for religion itself. Mr. Dixon, then member for Birmingham, moved a resolution by way of amendment, that "no settlement would be permanent or satisfactory, which left the question of religious instruction, in schools

supported by public funds and rates, to be determined by local authorities." In the debate on the 15th of March the chief speaker for the amendment was Mr. Henry Winterbotham, a young man of my own profession, for whom I had a great liking,[1] and who by that speech made a lasting impression upon the House. His disposition was exceedingly fair and candid, but he suffered himself to be the spokesman of other men's jealousies. I devoted myself principally to answering him, and he took what I said in good part.

He had said that "the intelligent co-operation of the people" was necessary to the settlement of this question. Agreeing in that, I asked how that co-operation could be obtained, except by meeting on equal terms, and as far as possible on common ground, those who belonged to the Established Church, and those who were connected with other denominations? The proved practical friends of education were those who had already done (as was estimated by the best judges) two-thirds of the necessary work. How could the necessary co-operation be had if all these, their views and principles, were to be set aside? Their schools were, generally, denominational as well as voluntary. If we were to co-operate, we must adopt means which in spirit and tendency were co-operative, not antagonistic. We must not seek to supplant them by a system intended to sweep them away, or

[1] He afterwards, for a short time, held a subordinate office (I think, as one of the secretaries to the Treasury), and died, prematurely and much lamented, at Rome.

to absorb and swallow them up. The supplementary system ought to be local; because so it would be elastic, and would adapt itself to the varying wants and circumstances of the districts to which it would be applied. The local authorities ought to have as much freedom as possible, consistently with such general principles as Parliament might define in the Bill. If the system was to succeed, how could we stop short of enabling men to get the kind of education which they really wanted? It was the condition of the whole argument, that, if the power were given, it would be used; that the local authorities in many cases did want to have religious instruction, and would have it if they were allowed. How could we look for their co-operation, if we said they should not supply their real wants, such as they knew them to be? If, to this denial of what they wanted, the element of compulsion were superadded, it would become an intolerable tyranny. The Government could not force upon the people, who were to tax themselves for it, a system of compulsory national education which would not be in accordance with the national sentiment and feeling. No jealousies or rivalries of Churches or sects would make such a thing go down. The broad facts of the existing schools showed that the people were in favour of religious education. The history of the Irish system of national education, which (originally intended to be entirely in the hands of the Government) had now become practically denominational under clerical management, proved the same thing. That system

began with schools vested in public authorities, but afterwards others were allowed, the buildings of which were supplied by private gifts or subscriptions, and these (called "not-vested" schools) were in 1870 four-fifths of the whole number. The rule was, that the patrons or managers of that class of schools might determine, subject only to a conscience-clause, whether any, and, if any, what religious instruction should be given in their schools, the books being supplied, and the schoolmaster's salary in most cases paid by the State. Majorities, as well as minorities, had rights in this matter.

With respect to my idea of religious education, I said :—

> I do not mean that the State is to prescribe a certain set of dogmas; nor have I, in my own view, in my own mind, any set of dogmas at all. But what I have in view is this—that, where morality is founded upon religious belief, the two things are inseparable; and, if you wish that which is the rule of life, the principle of conduct, to be taught (which is of much more importance than any secular education), you cannot tie the hands of the teacher behind his back, and tell him that he shall not speak of what he really believes, that he shall not refer to the highest sanctions for right and moral conduct, or to those truths and facts of religion which he believes to lie at the foundation of those sanctions. You cannot by any possibility lay down a law by way of exclusion or proscription against religious teaching in any formula whatever, without running the risk of crippling that which is of vital and essential importance, the power of teaching the rule of practice and life according to the sincere belief of the teacher. Of course, that rule is the foundation of all morality; and, although in a business point of view sound instruction in every kind of useful knowledge is of very great importance, I venture to say that sound morality is the thing of most importance of all, both politically and socially.

For my own part, I would rather that my child should be educated after the manner of the ancient Persians, who were only taught to ride, to shoot, and to speak the truth, than that he should be taught all the sciences in the world without the inculcation of that moral principle, which is involved in "speaking the truth." How can you, in a religious people, among a people who believe that morality is founded on religion, expect education in morality to prosper, if the sources and foundations of morality are not left free in the hands of the teacher?

I added, as to secular instruction, that there was all the difference in the world between an armed and a friendly neutrality. The friendly neutral was the man who would be with you as much as he could; the armed neutral he who was all but an enemy. I ventured to refer to our Lord's sayings:—"He that is not with us is against us"; and "He that is not against us is with us." A secular school, founded by persons who would prefer religious education, in places and under circumstances which would admit of nothing better, was friendly to religion, and might be penetrated by the spirit of religion throughout its administration. There was no necessary antagonism between a secular school and a religious school, between secular knowledge and religion: but the same could not be said of that phase of the secular idea, which proscribed and put itself into opposition to religion. Mr. Dixon's amendment did so, taking up a position of armed and not friendly neutrality, when it proposed to cast out of the measure the power of giving religious instruction in places where it was practicable to give it, and where it would be valued and desired by the people. Mr. Winterbotham

had quoted some flowers of our literature: I, following him, reminded the House of the manner in which Plato, in his *Republic*, treated the poets. They were received with honour, crowned with flowers, and conducted with music and dancing over the frontier, and so put out of the land. That appeared to be the sort of respect which was shown to religion, as an element of education, by those who said it should find no place in any school supported out of the public rates. They were an instance of those who, not being with us, were against us.

I referred to experience as proving that there were very few parents or guardians who wished their children to be exempted even from specific religious instruction in schools where it was given; and to schools religiously conducted under the management of municipal corporations, such as the City of London and the Corporations of Plymouth and Richmond, of which I had some knowledge, as showing that there was no practical difficulty in the use, by local bodies, of such powers as those proposed to be given to the School Boards. Their tendency, in the long-run, was in the direction of agreement, not against, but in favour of religious teaching, under proper safeguards for the consciences of the minority. But the greatest safeguard of all was that, in the very nature of things, no great amount of sectarianism could possibly be infused into the minds of children under the ages of twelve or fourteen years.

There were many who told me that the speech of which this is an abridgment had done good. But of

all the commendations bestowed upon it, none pleased me so much as that of a friend, not generally demonstrative, who wrote to me on the next day, that his interest in politics was "getting very languid," but that on this question he felt strongly; and that he found in my speech everything that he could have wished to be said. This was Sir Frederic Rogers, afterwards Lord Blachford. He was in the first rank of the ablest men among my contemporaries at Oxford,—my senior, in age and standing, by nearly two years. He took a "double first" in classics and mathematics, and obtained an Oriel Fellowship, while it was still the greatest distinction in the University. He became very intimate with Newman, and was a consistent but temperate supporter of the religious movement identified with Newman's name from its beginning. But when others drifted from their original moorings, he did not; he was a clear-sighted and independent thinker, and remained from conviction where he was. He was remarkable for great compressed power, kept under restraint, not by affectation (from which no man was more free), nor by that kind of reserve which has its source in caution, but by a naturally modest temperament, and supreme conscientiousness. In speech and manner he had the hesitation of one more careful to give others their due than to assert himself, and who desired to weigh every matter well, and to make his words the true and not exaggerated expression of his thoughts; and as in his thoughts he was discriminating, so he was in conversation. His

rare combination of great intellectual and moral qualities was known to few: but Gladstone, one of those who knew him from his youth, enlisted him in the public service, as permanent Under-Secretary for the Colonies; the duties of which office he performed in the best, but at the same time in the most unambitious way, for many years. I owed much in the earlier part of my London life to his counsels and example; and there were few men whose approval of my opinions or conduct would at any time have been more acceptable to me.

When the details of the Bill came to be considered in Committee, I acquiesced in Mr. Cowper-Temple's amendment, against teaching the distinctive catechisms or formularies of particular Churches or denominations in Board Schools; thinking this (however convenient and useful in its proper place) no necessary condition of that kind of freedom of religious instruction for which I contended, and more proper to be left to parents, clergymen, and denominational schools. But I strenuously resisted a motion made by Mr. Jacob Bright on the 30th of June, that in any Board School in which the Holy Scriptures should be read and taught, the teaching "should not be used or directed in favour of or against the tenets of any religious denomination."

If (I said) the amendment were passed, it would be impossible, consistently with keeping faith with the law on the one hand, and maintaining the peace of the community on the other, to give any real honest religious teaching. The proposition was, in fact, a very short, rapid, and inevitable road to mere secularism; because it aimed at the impossible and the unreal, at that which

the religious convictions of every individual teacher must compel him to believe he could not accomplish. Every man who held the common faith held it in a particular way, associated with the whole system of belief which he had himself personally received. If a man wished to teach religion, he must speak of it and teach it as he himself had received it, as he himself believed it. He could not teach religion in fetters; he must be permitted to speak like an honest man of the facts and truths which he had received. If a positive law were laid down upon this subject, and if the teacher acted in good faith, he would feel himself always on the point of some imaginary line which no man had yet defined or could define, or he must continually be endeavouring to repress that mode of teaching which was most in accordance with his own convictions. The exclusion of formularies was sufficient to remind him that he was not to constitute himself the organ of any particular denomination, though at liberty to teach freely and without fetters.

Mr. Forster held his ground, and the attempts made to exclude religious instruction by law from Board Schools were defeated. Many good Churchmen, however, felt uneasiness at the prospect that the contest would be renewed in the School Boards of many places; and some of them wished a fixed standard of religious instruction, which should be necessarily and always given, to be defined by law. David Melville, Canon of Worcester, a friend of Claughton and myself from our college days, and Dr. Walker, Rector of Cheltenham, both liberal-minded men, pressed this view upon me.

Melville wrote :—

Forster's speeches always make me think he feels that the religious instinct of the country, as well as the religious determination of the Legislature, ought to find a definite and positive provision, though he shrinks from supplying it. What

underlies the League, as interpreted by Mr. Dixon, will carry this question to the School Boards, and more often (I fancy) than you apprehend carry a secular system as an escape from dire strife. Secular schools ought not to be indirectly and accidentally created, but only positively and directly, like [those of] any other denomination. A religious *minimum* laid down by the State,—and all else free for local determination, from Unitarianism to Romanism,—would secure this. Does not the oath taken in a court of justice, as a condition of legal testimony, necessitate that the State, when it assumes to itself or delegates to another the province of National Instructor, as in this Bill it does [should] make provision or take security for meeting its own clear requirements? Moral principles, with such amount of theological teaching as is necessary to substantiate them, become (if so), part of the State system. The use of the Bible, the Ten Commandments, and the Lord's Prayer might be such legal *minimum*, perhaps?

Dr. Walker thought that a *Syllabus* of necessary doctrine, embodying the belief held in common by most Christians, might be drawn up for use in all public elementary schools. With these views I could not agree. Admitting (what it was impossible to deny) that there would be a risk of religious teaching being excluded from some Board Schools, I preferred encountering that risk to what seemed to me the greater difficulties and dangers of the alternative proposed. I wrote to Canon Melville:—

I must own, I do not see my way to the definition by the State of any *minimum* (or *maximum* either) of doctrine to be taught in all elementary schools. Indeed, when you yourself suggest the Bible, the Ten Commandments, and the Lord's Prayer, you seem to me to illustrate the difficulty: for in these would really be included *everything*, supposing the teacher to be a sincere believer, and permitted to apply and explain what he teaches. I should, myself, be perfectly satisfied: but would those be satisfied, whose jealousies of denominational teaching

create the difficulty? The plan which some have advocated, of teaching a scheme of doctrine from which all that good Christians of different denominations do not hold in common should be eliminated, is open (however plausible and well intended it may appear) to insuperable objections, some of principle, and others practical. In principle, it would be fatal to zeal and fidelity, if an eclectic and attenuated formulary, which no Church or sect would recognise as truly corresponding to its own belief, were imposed by an external and political authority. And, in practice, the jealousy of anything which they might regard as compromise of truth, on the part of conscientious men, and the disposition of all sorts of sectaries to discover some antagonistic dogma whenever their own shibboleths are not used, would render the attempt impossible.

My answer to Dr. Walker was to the same effect.

To the Rev. W. Foxley Norris

30 Portland Place, 30*th November* 1871.

In reply to your letters on the operations of the Education Act at Buckingham, I can only say, that, were I in your place, I should not, on account of the establishment of a Board School, or of the consequent increase of rates, relax my endeavours to maintain as effectually, or *more effectually*, than ever, a good Church School in the parish. Such circumstances must, no doubt, put to the test the reality of the Christianity and Churchmanship of those who profess to be Christians and Churchmen; if they are so indeed, they will not be found wanting, as the pressing occasions of their faith may require, in such degrees of effort and self-denial (though greater than they may have been accustomed to), as may from time to time be necessary. The earliest Christians gave up *all* that they had; and I suppose true Christians, in every country and age, must and will be ready to act *on the same principle*, in such measure as it may be made apparent to them, that they are called upon to do so. Far from thinking that the establishment of a Board School is a reason for ceasing to support Church

Schools in the same place, I look upon it as an additional call for their more zealous maintenance. The miserable dissensions of Christians make it impossible for the civil authority to co-operate directly in the Church's work, and the spirit of infidelity which is abroad would make this paralysis of moral power in the civil authority dangerous to the truth, if the Church were not roused by it to do her own work with constantly increasing zeal and self-denial. It is manifest to all thinking men that there cannot be any more important part of the Church's work than that which is concerned with the Christian education of her children.

Again, I should by no means, on this account, suffer myself to stand aside from the Board School, if established; or to treat it as an evil or hostile institution; which it need not be, except through some error or fault of those whose co-operation and influence might make it otherwise. If a Board School there is to be, by all means let yourself and other Churchmen accept such positions of influence as may be open to them with respect to it; let them do their best to work it honestly in the spirit of the law, so as to make it properly supplementary, and not antagonistic to all other efficient schools in the place, and not more burdensome to the ratepayers than necessary; and let them so regulate the instruction given in it, that it may be as useful, and as much in harmony with true religion, as is consistent with the absence of instruction in the distinctive symbols of particular religious bodies.

I cannot say that there is the remotest possibility of any interference by Parliament, with the discretion of Town Councils, when exercised in favour of the establishment of a School Board under the circumstances which you describe as existing in Buckingham.—Believe me, dear Mr. Norris, ever yours truly,

R. PALMER.

CHAPTER VIII

MURDERS OF ENGLISHMEN BY BRIGANDS IN GREECE—WAR BETWEEN FRANCE AND GERMANY

1870

It was in the spring of 1870 that the Secretaries of the Italian and British Legations at Athens, Count de Boyl and Mr. Edward Herbert, and two other young Englishmen, Mr. Frederick Vyner (brother of Lady de Grey, now Lady Ripon) and Mr. Lloyd, were murdered by brigands at Oropus in Greece.

The victims of this outrage were all [1] young men of bright promise and unblemished lives; two of them personally known to me. I made the acquaintance of Mr. Herbert at Geneva, in 1857, through my brother Edwin, and Mr. Lloyd was the son of a County Court Judge, long a leading member of the Chancery Bar. Mr. Vyner I knew only from the papers laid before Parliament; but these were enough (as I said in the House of Commons) to make even

[1] The Italian Secretary was described by his official superiors as "a young man of pure character and brilliant promise beloved by every one who knew him."

a stranger feel affection for him. "Never did any one leave memorials of a more gentle or gallant spirit; he was not willing to be saved at the expense of his courier, his servant, his friend, or of any other person. He exhibited a natural desire for life; but, if that was not possible, he, in the simplest and most unaffected manner, asked for nothing but an English Bible, and the prayers of his friends."

There was a band of brigands, whose names were well known, infesting the north of Greece, twenty-two in number; four of them (as I was told on good authority) Greek subjects; the rest from beyond the Turkish frontier. They fell upon this party when making an excursion from Athens to Marathon. The travellers had inquired of the proper authorities whether there was danger, and had asked for protection if there was; they were given, without any hint of danger, an ordinary escort of four mounted gendarmes, although the request was made by the Chancellor of the British Legation, and the Greek Government had received information that the banditti, or some of their troop, were near Marathon. A detachment of foot soldiers, who happened to be in the neighbourhood, was ordered to look out for and protect them; but of this the travellers knew nothing; and moving, in their ignorance, faster than the soldiers, that order was of no practical use.

The brigands, finding that they had in their power persons whose lives were of importance, two of them belonging to Foreign Legations, determined to make out of the capture all the profit they could.

They suffered Lord Muncaster and some ladies, who were of the party, to go to Athens, to set on foot negotiations for a ransom; and communications passed backwards and forwards, not only between the captives and their friends, but between the brigands and the Greek Government; who (the King especially) were willing to do everything that was lawful and possible for their rescue. But the communications of the brigands were not with the Government only; they had partisans, if not accomplices, at Athens, with whom they took counsel; and they were advised by practising lawyers there. M. Zaimis, the Greek Prime Minister, was understood by our Minister, Mr. Erskine, to state that political influences opposed to the Government were brought to bear upon the course of those negotiations, for the supposed purpose of forcing the Government to convoke an extraordinary meeting of the Assembly, and so give the Opposition an opportunity of defeating the Ministry and driving them from office; and that, with that or some other political object, the brigands were induced to insist, not only on an enormous ransom, £22,000, but upon an amnesty, which being against Greek law, the Government considered it impossible to grant. The ransom, great as it was, would have been paid, if nothing more had been demanded; and the brigands at last consented to give up their captives if it were paid, and if a safe-conduct out of Greek territory were granted them. To these terms the Greek Government agreed; but to prevent the possibility of the

captives being removed to some place in Thessaly or elsewhere, where they could not be followed, troops were posted in the neighbourhood of Oropus in Eubœa, to which the band had shifted its quarters. A collision followed; and then, fulfilling their threats as to what would happen if they were attacked, the brigands murdered their prisoners.

Lord Carnarvon, a near relative of Mr. Herbert, gave notice of his intention to call the attention of the House of Lords to this subject; and I was asked, by some friends of the murdered men, to do the same in the House of Commons; which I did upon the 20th of May. In my speech, I referred to what Mr. Erskine understood M. Zaimis to have said as to the connection of some of those who advised the brigands with Greek politics. This led, shortly afterwards, to a correspondence between M. Zaimis and myself. He wrote to me, through the Greek Minister in London, on the 1st of June :—

Monsieur—Je viens de lire dans les journaux le discours que vous avez prononcé à la Chambre des Communes dans la séance du 20 Mai. Mon intention n'est pas, monsieur, d'entamer avec vous une discussion sur la manière dont vous appréciez les faits qui ont abouti à la sanglante tragédie d'Oropos. Cependant, malgré la réserve qui m'est commandée par la position officielle que j'occupe, je faillirais à l'honneur, et à ce que je dois à moi-même, si je ne m'empressais de réfuter les assertions inexactes qui me touchent personnellement. Ainsi, malgré la correspondance échangée entre moi et l'honorable M. Erskine, et dont vous faites mention, vous continuez, monsieur, à affirmer "qu'il est hors de doute que le premier Ministre Zaimis a exprimé la conviction, que de personnes politiques d'Athènes, engagées dans une opposition politique au gouvernement, se sont mis en communication avec les brigands, et leur ont conseillé de faire des

demandes que le gouvernement ne pouvait admettre." Telle, monsieur, n'a jamais été ma conviction ; et je répète ici textuellement ce que j'écrivais le 5 Mai à M. Erskine. "Le dont je me souviens c'est qu'après le retour des émissaires que le gouvernement avait envoyés aux brigands, je vous ai dit, en vous entretenant du résultat de leur mission, que d'après leur informations, d'autres émissaires, expédiés par de personnes qui, dans un esprit d'opposition, voulaient créer des embarras au gouvernement, s'étaient aussi rendus auprès des brigands, pour les engager à insister à l'amnistie pour eux-mêmes et pour leur compagnons en prison. Je n'ai pas nommé les chefs de l'Opposition, et je n'ai fait allusion à aucun d'eux."—Il résulte clairement de ce qui précède, que, loin d'avoir émis une idée personelle quelconque, je n'ai fait que répéter à M. Erskine ce que mes émissaires m'ont rapporté. Leur dire, d'ailleurs, n'incrimine nullement l'Opposition politique ; car les mots, "personnes qui, dans un esprit d'opposition, voulent créer des embarras au gouvernement," s'appliquent tout naturellement aux receleurs et autres agents que les malfaiteurs ont partout, et en Grèce aussi, et qui sont en hostilité permanente contre tout gouvernement établi. Par conséquent, je ne saurais, monsieur, protester assez haut contre une interprétation donnée à mes paroles, dont on pourrait s'autoriser pour mettre en suspicion l'honorabilité de mes adversaires politiques.

I replied[1] :—

Sir—If I do not content myself with simply thanking you for the courtesy with which your letter is expressed, and accepting (as I am bound to do), your explanation of the words used by you to Mr. Erskine, as conclusive of the sense in which you intended them to be understood, it is because I would not willingly permit you to suppose that I did you injustice in my speech to which you refer, either through inattention to the terms of your letter of the 5th May to Mr. Erskine, or from any other motive. I had carefully read and considered the language of your letter to Mr. Erskine, of the 5th May : but you will not, I am sure, be surprised that I should have thought it proper to understand it, not as a document standing alone, but in connection

[1] 18th June 1870.

with Mr. Erskine's reply to it immediately afterwards, addressed to yourself in writing. In that reply, Mr. Erskine appeared to me to draw a distinction between "les chefs de l'Opposition, proprement dits" (such as Mr. Disraeli is in this country), and those whom he had described as "leading members of the Opposition";—accepting your disclaimer, as applicable to the *chiefs*, but adhering to his own words, as correctly describing the persons referred to—whom I, therefore, could not suppose to be any other than political personages connected with, though not at the head of, the political Opposition to your Government. I was confirmed in this interpretation by the nature of the motive (strictly political and parliamentary), which Mr. Erskine originally stated to have been suggested by you, as the probable cause of the interference of these persons.

The impression made upon me by M. Zaimis's explanation was, that it might perhaps have been chiefly intended for home use in Greece; but that, at all events, it threw a curious light upon the political state of his country at that time.

When I addressed the House of Commons on this subject, I had necessarily to consider whether, on the principles of international law, we could hold the Greek Government responsible for what had happened; and, if so, on what ground? If on the ground of that ordinary right to protection, which all foreigners resident or travelling within the territory of a civilised Government are entitled to expect at its hands, this could not be greater than that which it did or ought to extend to its own subjects; and it could be asserted only in legal and constitutional ways. No such Government is responsible for the absolute safety, either of subjects or of strangers within its dominions, from crimes of violence; it is enough, if it has reason-

able laws for the repression of such crimes, and acts upon them in good faith and without partiality. The notoriety and the audacity of the brigandage which existed at that time in Greece were, no doubt, extraordinary, and indicative of considerable weakness in the Government; but it might have been partly due to historical and perhaps unavoidable circumstances, and partly to the condition of the adjoining Turkish territories, and the character of the frontier between Turkey and Greece. It was impossible to make out against the Greek Government a case of wilful and intentional connivance. And Lord Clarendon, our Foreign Secretary, in his representations to that Government, had required from them more than the honest and impartial execution of their own laws; which would seem, on that principle, to be the limit of their obligation.

But the capture of ambassadors or those who participated in their privileges by armed banditti, when means which were neglected might have been used to prevent it, and their subsequent murder when anything which was not done (though it might have required an act of ratification or indemnity from the national legislature), might have been done for their deliverance, stood upon other and higher ground. All international jurists agree that ambassadors and their secretaries, etc., are entitled not only to the same security as all other foreigners, but to a peculiar and special protection, by virtue of the character in which they are received. The faith of the nation is pledged, not (of course) to anything which is in the

nature of things impossible, but to the use of all the resources which are at the command of the State, both to save them from any known risk of outrage, and to rescue them, if outraged by any persons within its territory. Mr. Herbert's case, as well as that of the Italian Secretary (whose Government took that view), came within the range of these principles; and, although their companions were not personally entitled to the same privilege, they were entitled to the benefit of their association, under the actual circumstances, in a common calamity with those who were. The whole diplomatic body at Athens, in a joint communication to the Greek Government while their deliverance was still possible, urged upon that Government the payment of the necessary ransom; founding that request upon the "violation of the security due to diplomatic *employés*, and in order not to prejudice future rights." I thought, with them, that this was the safest ground to stand upon; the other ground being referred to, so far only as the particular circumstances of the case might seem to justify it, in aid of that which seemed stronger and more clear.

I know not for what reason, but the fact is, that in insisting upon what I considered the stronger ground, I had not the concurrence of the principal organs of public opinion in this country. Lord Carnarvon, in the House of Lords, declined in that respect to go with me: and so did Lord Clarendon. But, for my own part, I could not, on the broader and more general ground, have made myself the

champion of all that Lord Clarendon said and did: I could not have treated the matter in the "*civis Romanus*" fashion of Lord Palmerston; nor could I have set aside the laws of Greece, as if in such a case we had no concern with them.

The demands actually made by our Government upon that of Greece were moderate; and the Greek Government had no difficulty in complying with them.

I expressed in my speech, as strongly as I could, the goodwill which I always felt towards the Greek people, and my hope that this calamity might lead to the exertion of the whole power of their Government for the suppression of brigandage and all other forms of anarchy: in which case the loss of those precious lives would not be without its consolation. That hope has been largely fulfilled. Under the king, whose noble spirit shone forth brightly upon that occasion, Greece has made more progress since 1870 than during all former years from the recovery of her independence.

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1 Carlton Gardens, 21*st May* 1870.

My dear Sir Roundell—I have just read your speech of last night, and I cannot resist writing to tell you how very grateful Lady de Grey and I are to you for the way in which you spoke of our dear brother.

It is a great, though sad pleasure to us that the high qualities which he displayed in his hour of trial, should have been acknowledged in the House of Commons in terms so touching, and with the weight which attaches to your eminent authority.—Believe me, most sincerely yours, De Grey.

On the 27th of June 1870, Lord Clarendon died, lamented by all men; and Lord Granville succeeded him at the Foreign Office, not many days before the outbreak of war between France and Germany,—a most critical time for that department to fall into new hands. The most important passages of Lord Clarendon's public life were the fruitless negotiations which ended in the Crimean War, and the part which he took in the settlement of the terms of peace at Paris in 1856. On that occasion he shared with Lord Palmerston the responsibility of consenting to a renunciation of some of the previously accepted usages of maritime warfare, which many persons thought imprudent on the part of a great Insular and Naval Power, and which certainly was not necessary for the business in hand. The effect of that renunciation has yet to be seen. It would be too much to say, that Lord Clarendon was a man of commanding ability; but he knew his own mind, and how to deal with other men. He was a statesman of a type of which this country has happily been fertile—practical, honourable, content to do his own work well. His training and experience in diplomacy made him a discreet Foreign Minister: his manners were frank and agreeable; and his character pure.

Lord Granville, from the time of his going to the Foreign Office, often consulted me upon questions arising in his department; unofficially of course; but in other respects almost as if I had been still Law Officer: and on those occasions I willingly gave him what assistance I could. During the war between

France and Germany, I received from my friends in the Ministry and others private communications, which increased my interest in the public news, and gave me good opportunities of knowing the state of opinion and feeling among those best informed at that time. Sir Henry Bulwer (afterwards Lord Dalling, whose brother-in-law, Lord Cowley, had been Ambassador at Paris) wrote to me on the day after the French Emperor decided on war, that he thought we might and ought to have prevented it; an opinion which (perhaps because I had not the same means of knowledge) I did not share. He said :—

I think Prussia and France have given the world, alternately, a pretty good lesson as to nations being still ready, in spite of schools, newspapers, and commerce, to fight for vanity or ambition. If the *Times* had held language half as violent as that which it now uselessly expends five or six days ago, and the House of Commons had manifested any interest in affairs that extended beyond parish matters, war would not have taken place. It is true that France has been preparing herself since Sadowa for war; but most untrue that the Emperor was determined upon it at this time. France is overbearing; Prussia impertinent; and, directly they got into correspondence, nothing but the very decided mediation of other Powers could have prevented a quarrel. I hear Granville's correspondence is very good: my experience, however, has taught me that, in these cases, more is done personally and ex-officially than by the cleverest official correspondence. Very strong language to either party might have stopped war from taking place. Now it has taken place, I don't think it polite to abuse one party or the other; but rather, while criticising calmly past events, to throw the weight of our language on to future contingencies, and exercise our diplomacy in providing measures of precaution against them.

We spent that Long Vacation principally in Scotland, making Pitlochrie our headquarters for many

pleasant visits, and it was at Pitlochrie that the news of the German victories reached us, day after day with startling rapidity. Once, when a train going north stopped there for a few minutes, I had a conversation with Lowe, who was a passenger in it, on the question, which had already become practical, of Germany exacting a cession of territory from France. His opinion seemed to be that there would be good reason for it. I thought (as I have always continued to think) that to exact such terms would be to turn any peace which might be concluded into a truce, and to keep the elements of European disturbance and disorder in a state of fermentation till there should be another war. Lord Hatherley wrote to me from Balmoral, on the 2nd of October :—

> The really melancholy state of France is enough to depress any exuberance of spirits. It seems as though a moral blight had paralysed her best energies. Nothing was real under the Empire, and truth appears to be unknown in any department of the State. I cannot say that the cynical mind of Bismarck possesses any greater moral attraction; but there is a solidity, soberness, and resolution about the German nation (as we may now call it), that makes me hope for better things than any that a Bismarck policy alone could evolve.

On the 24th of the same October, a patriotic Frenchman, to whom I was a stranger,—M. Boivin Champeaux, "first advocate-general" at Caen,—wrote urging me to use such influence as I might possess with our Government, to induce them to do something for his country. His letter led to an interesting correspondence, which I showed to Lord Granville, and he to some of his colleagues.

His opening letter[1] was :—

Monsieur—Tant que la France surprise, vaincue, humiliée, ne paraissait avoir de grâce à attendre que de son vainqueur, je n'ai pas osé vous écrire. Mais à cette heure, la face des choses est singulièrement changée à notre avantage. Paris, armé d'une manière formidable, résolu aux privations et aux sacrifices, peut défier pendant plusieurs mois les efforts de l'ennemi. Je puis vous attester, sur mon honneur, que la province est levée en armes, et que outre nos forces régulières, aujourdhui considérables, une nuée de volontaires de tout âge et de toute condition harcèle les flancs de l'ennemi, et lui fait une guerre incessante et meurtrière. Enfin, les pluies sont venues, et l'hiver approche. La Prusse a donc maintenant à compter avec nous. C'est le moment pour les puissances neutres d'intervenir; car elles peuvent opposer aux exigences du vainqueur les ressources certaines, et les espérances de succès, qui restent au vaincu.—Sans mandat de personne, mais mû par le sentiment de l'humanité, par l'amour de mon malheureux pays, par la considération de la gloire de votre qui m'est précieuse, je viens vous supplier de mettre au service d'une médiation qui nous serait favorable l'influence que vous donne sur la résolution du gouvernement de l'Angleterre votre caractère et votre talent. Je n'ai point à vous parler des bases, sur les-quelles la paix pourrait être proposée. L'opinion publique en France est préparée aux concessions qu'un grand peuple qui souffre de la folie de ses chefs peut faire sans humiliation.

I answered him (31st October 1870) :—

Sir—I have had the honour to receive, after a short delay, your letter of the 24th of this month. I wish, from my heart, that I had it in my power to do anything that could be conducive to the true welfare of France, or to the restoration of a safe and lasting peace. Nor do I believe that the Government of this country would hesitate to use any fair opportunity to promote, by their good offices, an end so eminently desirable. I am sure they, and my countrymen generally, feel profound sorrow and sympathy for the calamities which have overtaken

[1] Dated Caen, 1st October 1870.

France, on whomsoever the responsibility for those calamities may rest. But it is not by exciting hopes of benefits from the mediation of neutral Powers, that the interest of peace or the welfare of France can be promoted at this moment; unless there were really grounds (which I cannot see) for believing, that those who have assumed the conduct of affairs in France would enable the mediating Powers to suggest terms acceptable to Germany also. The opinion which you yourself express, that the present is a fitting opportunity for mediation, appears to be founded on the belief, that Paris is in a condition to resist for many months the besieging forces; and that the Provinces are about to take arms in sufficient strength to inflict great disasters on the invaders. I fear the prevailing impression in this country is, that even wise and patriotic Frenchmen are too apt to give credit, on this subject, to representations, the truth of which cannot be so readily accepted here, without evidence of a kind which has hitherto been entirely wanting.

He rejoined[1]:—

MONSIEUR—J'ai sous les yeux la lettre que vous m'avez fait l'honneur de m'écrire, sous la date du 31 Octobre. Vous me disiez dans cette lettre, que les puissances neutres pourraient efficacement employer leurs bons offices en faveur de la France, pour parvenir à la conclusion d'une paix honorable et durable, si Paris était en position de résister pendant plusieurs mois encore aux forces qui l'assiègent, et si réellement la Province, par ses armements, était en état d'infliger prochainement à nos envahisseurs des désastres sérieux;—mais que, malheureusement, l'opinion publique, dans notre pays, était sujette à des illusions trop souvent démentis par l'évidence des faits. Vous vouliez bien ajouter, que l'Angleterre serait d'autant mieux disposée à intervenir, si nous parvenions à envisager sainement la réalité sombre de notre situation; que votre gouvernement et vos compatriotes ressentaient une vive et sincère sympathie pour les calamités qui nous accablent.

Cinquante deux jours se sont écoulés depuis cette époque. Paris est encore debout. Plusieurs sorties glorieuses ont été

[1] 22nd December 1870.

effectuées par sa garnison, et des flots de sang Allemand ont coulé. Il est prouvé que, même sous le rapport de l'artillerie, l'armée de Paris peut se mesurer avec l'armée d'investissement. Chaque bataille prolongera la résistance de cette ville héroïque, puis qu'elle se nourrit du carnage des chevaux qu'elle fait. Enfin, les passions démagogiques, le plus puissant auxiliaire de nos ennemis, sont réfrénées. D'un autre côté, les levées provinciales s'augmentent, s'organisent, et s'aguerrissent. Si dans le nord et sur la Loire nous avons essuyé de nombreux et douloureux échecs, partout la victoire a été chèrement payée; et dans plusieurs rencontres le dessus est resté à nos armes. Ce qui est admirable surtout c'est de voir, dans nos départements, toutes les classes de la société, soit par des sacrifices d'hommes, soit par des sacrifices d'argent, apporter au gouvernement de la défense nationale le concours le plus dévoué. Une nation qui se comporte ainsi est plus près de vaincre que d'être vaincue.

De ce qui précède, il ressort, que les espérances que je vous avais manifestées, que vous étiez fondé à regarder comme chimériques et inspirées par un aveugle patriotisme, se sont en grande partie réalisées. Vos journaux eux-mêmes reconnaissent que, depuis un mois, la situation des belligérants s'est modifiée à ce point, que les chances leur paraissent égales, et l'issue douteuse. Le temps semble donc venu pour l'Angleterre, d'après votre propre sentiment, des plus grandes résolutions.

Elle peut, après avoir vu son intervention diplomatique éludée et jouée, continuer à rester spectatrice du duel que se livrent la France et l'Allemagne, ou pour mieux dire le principe libéral et pacifique et le principe autocratique et militaire. Elle aura ainsi ménagé ses enfants et ses trésors; mais elle aura perdu son influence sur le continent. La part prise par l'Italie à la guerre de Crimée a été le premier degré de son accroissement; et nos mêmes, si nous n'avons pas laissé lâchement égorger la Danemark, en serions nous réduits à implorer votre secours?

Ou bien la Grande Bretagne peut jeter dans la balance le poids de son épée, dire que de part et autre l'intégrité des territoires sera respectée, et déclarer nettement qu'elle fera la guerre à celle des deux puissances qui n'acceptera pas sa médiation. Soyez assuré, que la menace suffira. En agissant ainsi, l'Angleterre entraîne à sa suite tous les neutres, impose la paix aux

combatants, devient l'arbitre du monde, et assure l'avenir de la civilisation.

Quel sera, de ces deux partis, celui que préférera votre pays? Nous le saurons dans quelques jours. J'espère, pour sa gloire, qu'il adoptera le second, et qu'il se hâtera de la faire, pour arrêter l'effusion du sang, et tarir la source de tant de larmes.—J'ai pensé, que votre bienveillance m'autoriserait à vos communiquer ces reflexions.

To this my reply[1] was:—

DEAR SIR—I am honoured by the receipt of your letter of the 22nd December; and, before answering it, I cannot refrain from expressing my ardent and heartfelt desire, that, before the new year upon which we are about to enter is very far advanced, it may please God to restore the blessings of peace to Europe, and to assuage the calamities under which France is at present suffering. I do not, indeed, think that this happy result can be brought about, or ought to be attempted, by any departure on the part of Great Britain from the attitude or the duties of neutrality; but I do not, on that account, less earnestly and anxiously desire its attainment.

Permit me, in the first place, to correct a misconception, into which you appear to have fallen, of the meaning of a part of my letter of the 31st October. . . . I do not remember that I myself attempted to define what I should consider to be a favourable opportunity for the use of good offices with a view to the conclusion of peace on the part of the neutral Powers, further than by saying, that it would seem to be necessary for that purpose that the mediating Powers should be enabled, by those who have assumed the conduct of affairs in France, to suggest some terms of peace, as to which there might be reasonable ground for supposing that they might be accepted by Germany.

On a review of the occurrences of the two months which have since elapsed, it is impossible to do otherwise than acknowledge, with respect and admiration, the power of endurance and the spirit of patriotism and self-sacrifice which have been so strikingly exhibited, both in Paris and throughout France, and which have fully justified (if justification were necessary) the

[1] 30th December 1870.

expectations of a brave and prolonged resistance which you entertained in October. But, although Paris has held out for a period which has already surpassed my own anticipations, and may be able to continue her defence for some time yet to come, —and though the Provinces have sent numerous and gallant armies into the field,—still I am not aware that the strength, either of the garrison of Paris or of the provincial armies, has proved to be sufficient to inflict serious disasters upon the Germans, or in any material degree to alter the fortunes or the prospects of the war. Whatever increase of sacrifices Germany may have had, or may yet have to endure, through the prolongation by those means of the war, the sacrifices on the part of France must be still greater, and (under her present calamities) more exhausting and more difficult to repair. No sign has yet been given, that I am aware of, of any willingness on the part of the Government of Defence to treat for peace, or to authorise any neutral Powers to make any overture for that purpose, upon any terms which it is possible to suppose the German nation, in the present or in any probable future position of affairs, would be prepared to accept. And it is, indeed, hard to see, until some such appeal shall have been made to the French people as that recommended by your venerable countryman M. Guizot, where the authority is to be met with in France, which could enter upon negotiations for peace with any admitted right to speak in the name of or to bind the nation.

Then, is it indeed the duty, or is it consistent with the duty, of Great Britain, to depart from the path of neutrality, and to interpose authoritatively—that is, by force of arms, if needful—to compel the Germans to raise the siege of Paris and to retire from France without any fruits of their conquests? However deeply we may feel for your misfortunes, however strongly we may desire, on grounds both of feeling and of European policy, that the power of France may not suffer any great or permanent diminution, I am wholly at a loss to see how we could justify before the world at large an intervention in the wars of our neighbours, so entirely at variance with the principles of pacific policy on which we have uniformly and sincerely professed to act for the last fifty-five years. Whatever may be the merits of the present controversy between Germany and France, Germany

has, at least, done *us* no wrong: and it was, at least, not by our counsels,—rather, it was against our earnest remonstrances,—that France entered into a war with Germany, aggressive in the first instance, though now it has become one of defence. Hitherto, no part of the responsibility is ours: and how can the success of Germany, and her perseverance till she considers herself to have added security to success, justify us in now undertaking it? Do we owe no duty to our own people, to abstain from involving them (when we are neither attacked ourselves, nor bound to interfere by any engagements), in miseries so frightful as those with which it grieves us to see our friends and neighbours afflicted? What preparations have we made for such an undertaking? Are we to enter upon it without being sure that we have the means to carry it through with honour? Are we (with the example of Napoleon III. before our eyes), to encounter with our peace establishments the greatest military Power of modern times, and to light up, for the sake of extinguishing the flames of war in France, a general European conflagration? At least, if this should have been done at all, it ought to have been done much sooner. But indeed, my dear Sir, to refuse to do this, is not to be wanting in friendship to France, or to pursue any isolated or selfish course,—it is only to recognise and adhere to our own true national position and duty, as a peaceful and peace-loving nation, who would wish to see all wars which are not strictly defensive regarded throughout the world as public crimes.

One more letter[1] from M. Champeaux closed the correspondence:—

MONSIEUR—La lettre que votre Honneur a bien voulu m'écrire, à la date du 30 Décembre d'année passée, a rempli mon âme d'amertume et de tristesse. J'y ai trouvé distinctement la preuve que les classes dirigeantes, en Angleterre, à quelque parti qu'elles appartiennent, ont, par raison démonstrative, pris la résolution ferme de ne point intervenir en faveur de la France, sinon par des conseils dont la Prusse se joue. Notre nation avait de grands défauts qu'elle expie; elle était légère et fan-

[1] 18th January 1871.

faronne ; mais elle avait une qualité qui rachetait bien des torts, et qu'on ne verra plus, la générosité. Si des calamités pareilles à celles qui nous accablent avaient fondu sur vous, je vous affirme que la France aurait voulu mettre au service de son amie et de son alliée d'autres secours que ceux où se borne votre politique circonspecte et réservée. Je vous remercie cependant de l'expression de votre sympathie ; et, afin qu'elle soit bien éclairée, il faut que vous connaissiez d'un patient l'horreur et l'étendue de nos maux. Je ne parlerai que de la Normandie.

Nos districts manufacturiers ont fermé leurs ateliers. Rouen, Elbeuf, Louviers, Charleval, n'ont plus ni une broche ni un métier en activité. Demain Bernay et Lisieux seront dans le même cas. Trois cent mille ouvriers, avec leurs familles, meurent de faim. Nos districts agricoles sont ruinés pour plusieurs années par le passage des troupes. Vous pourriez aller du Mans jusqu'au Hâvre, en passant par Evreux, sans rencontrer ni une vache ni un mouton. Nos gares de chemin de fer, nos hôtels de ville, nos églises, tous nos monuments publics, sont encombrés de malades, de blessés, de mourants couchés sur la paille. Ils nous apportent la peste noire. Deux de mes collègues de la Cour ont été victimes, la semaine dernière, de cette horrible maladie. Je ne vous parle pas de la dispersion des familles, dont les membres sont les uns sous les drapeaux, les autres séquestrés dans Paris, les autres en exil, et qui ne se retrouveront que décimées. Voilà, monsieur, l'exact tableau de cette partie de notre pays que j'habite ; et qui n'a encore été, pour ainsi dire, qu'effleurée par l'invasion. Vous pouvez juger par là de ce que doivent être les provinces infortunés, où l'occupation ennemie est en permanence depuis plusieurs mois.

Vous regrettez que nous ayions jusqu'alors négligé de faire connaître aux puissances neutres quels sacrifices nous serions disposé à faire pour obtenir la paix. Est-ce donc aux vaincus, —à moins de se rendre à discrétion,—à prendre une pareille initiative ? A bien plus juste titre, vous devriez faire un crime à nos vainqueurs de n'avoir jamais formulé hautement et clairement les conditions qu'ils entendaient nous imposer.

Au reste, ce que je puis vous dire, c'est que nous sommes plus que jamais déterminés à périr comme nation, plutôt qu'à nous survivre déshonorés. Le spectacle que nous donnons au

monde, n'en est-ce pas la preuve? Notre gouvernement est né de l'émeute, de la surprise, et du hazard; il n'avait aucun mandat régulier; la forme qu'il affectait était antipathique à la majorité du pays; quelques uns de ses membres étaient incapables ou ridicules; et cependant nous l'avons tous accepté, sans distinction de parti; nous lui avons prodigué sans marchander nos hommes et notre argent, le jour où il a proclamé que nous ne céderions pas, quoi qu'il pût arriver, un pouce de notre territoire. Depuis, ce même gouvernement a été aggressif, injuste, phraseur, et a commis de grands fautes; nous lui avons tout pardonné, nous lui pardonnerons tout, et il sera notre gouvernement légitime, tant qu'il n'acceptera sur la question de l'intégrité du territoire aucune transaction.

Un de vos journaux, celui qu'on appelle, je crois, le journal de la cité, après l'infâme capitulation de Bazaine, n'a pas craint d'écrire en tête de l'un de ses articles, *finis Galliae*. Il pourra le commenter encore ce mot impitoyable, après la defaite que nous venons d'essuyer au Mans. La conférence internationale qui s'ouvre en ce moment à Londres, et où nous n'irons pas pour implorer une méprisante compassion, pourra aussi l'inscrire dans ses protocols, *formâ omittendi*. Mais si la France expire, elle a, en mourant, cette claire vision de l'avenir, qu'elle laisse entre les Alpes et les Pyrénées un gouffre où s'engloutira la civilisation moderne.

This was a letter which it was not possible to read unmoved; though there was nothing in it to strengthen the case for an armed Intervention to dictate terms of peace to Germany.

It was then that Russia saw and seized her opportunity to get rid of that condition of the Treaty of 1856 which limited the number of her ships in the Black Sea. While her repudiation of it was fresh, and before it was known what might follow, I wrote to Cardwell on the 21st November 1870:—

I hope you will not think I presume too much upon our habits of intimate and unreserved communication on all subjects,

and our old agreement of opinion about the Crimean War, if I venture to express to you my most earnest hope, that the Government will not allow themselves to be drawn into another Russian war in the present state of Europe, by any difficulties, be they what they may, which may arise out of the recent Russian correspondence.

How is it possible that we can be under any real moral obligation to run such great hazards for such a cause, and under such circumstances? Lord Granville was, of course, right in refusing to admit that Russia can absolve herself from her own treaty obligations. But, before we go to war, the question must be, not what pretensions Russia advances, but what she *does:* and,—having regard to what she actually does,—what are our own obligations in the matter? I always thought (and I said in Parliament at the time), that Russia would be sure to take the first opportunity of shaking herself loose from the degrading conditions which were (as I thought unwisely) imposed upon her: and it would take very much to convince me that our national welfare ought to be put in peril for the enforcement of conditions which, in my judgment, ought never to have been imposed, and which were and are in themselves a standing danger to the peace of Europe, greater than the aggressive ambition which they were meant to restrain. If the other great Powers who were parties to the treaty were all, or the most considerable of them, of one mind about the matter, able and willing to take their parts, and calling upon us for our co-operation, the case might be different. But with France unable, and Prussia (I suppose) neither able nor willing to do anything,—if that is the state of the case, it cannot be a sound moral or political doctrine, which would impose upon any one nation, single-handed or with second-rate alliances only which might rather complicate than diminish the risk, so tremendous a liability.

Cardwell thought as I did. He wrote (22nd November), "I am much obliged to you for your letter; of which you may be sure I will make no use you would not approve." The conclusion of the Government was the same.

CHAPTER IX

MR. MIALL'S MOTION FOR DISESTABLISHMENT—ARMY PURCHASE—NEW SPEAKER—THE COLLIER AFFAIR

1871–1872

On the 9th of May 1871, Mr. Miall, the leading representative of the "Liberationist" party, opened for the first time in the House of Commons the general question as to the maintenance of the Established Churches of Great Britain, by moving a resolution for their disestablishment. I answered him, in a speech which was successful in the House, and Sir Arthur Helps, a strong independent thinker, wrote to me on the next day, commending its "reticence." "I felt" (he said) "as I read, that, as you touched each point, you could have said much more, and that more strongly even than you did say it: but that your object was to win over, and not to confound, your adversaries."

Cardwell, during that session, had charge of the chief Government measure, the Bill for the abolition of Purchase in the Army, which most of the officers in the House, and particularly Colonel Augustus

Anson (an officer of great merit, son-in-law of my friend the Bishop of St. Albans), warmly opposed. It was a question on which I had no special knowledge, and desired to take no part; Cardwell being well able to defend himself. On one occasion, however, I could not help interposing a few words, by way of protest against the pertinacity with which points were still urged which the House had determined in favour of the Government by large majorities as tending to the destruction of parliamentary government; and I believe that my protest had some effect in accelerating the progress of the measure. At last it was sent up to the House of Lords; where, though not rejected, it was stopped for a time by a resolution adverse to its principle. The Government fell back upon the authority of the Crown, and a Royal Warrant was issued, putting an end to the purchase system, and throwing upon the House of Lords the responsibility of refusing the only thing for which legislation was necessary, compensation to the officers who might otherwise suffer by the change. This the House of Lords was not likely to, and did not, refuse. But there was an outcry against the settlement by Royal Prerogative of that part of the question which had been the subject of controversy. It was denounced as unconstitutional, not by the Opposition only, but by some who generally supported the Government. One of these, Mr. M'Cullagh Torrens, member for Finsbury, spoke strongly in that sense on the 15th of August; taking notice of my own absence, and inferring from it, with much emphasis,

that I was either unable or unwilling to defend the Government. Upon this, Cardwell wrote to me, recalling a conversation which had passed between us, and asking my leave to state the substance of it in the House. The session was then within a week of its close; I had gone down, weary enough, to North Berwick with my family, where we had spent part of the preceding autumn, and meant to establish our headquarters for that vacation. If my opinion was to be stated, I preferred that it should be in my own words; so I sent Cardwell this answer:—

I am afraid my answer to your letter will hardly arrive in time to be of any use. I was surprised to see the reference made to me in Mr. Torrens's speech on Tuesday; and I need hardly assure you that as, on the one hand, my absence from London was due to no other cause whatever than my own private convenience (coupled with the belief that I should not be omitting any public duty which would require my continued presence in the House of Commons till the end of the session), so, on the other, I have never expressed myself to any one in private on the subject of the Army Bill or the Royal Warrant in a manner different from that in which I have spoken to yourself, or so as in any way to account for the introduction of my name into Tuesday's debate. I have always thought and said, that the issuing of such a Warrant was within the undoubted power of the Crown; though to do so without having a sufficient assurance that Parliament would provide the necessary compensation for the officers who would otherwise suffer from such an exercise of royal power, would not be just, and therefore would not be consistent with the spirit of the Constitution, which vests all such powers in the Crown in the confidence, and for the purpose, that right, not wrong, shall be done. I should have been glad, if it had been generally and clearly understood from the beginning, that, subject to the sense of Parliament being ascertained with reference to the point of compensation, the form of procedure would be that which was eventually

adopted; because it is certainly an evil, that the adoption of one constitutional mode of procedure rather than another should appear to arise from an adverse vote of the House of Lords. But I consider that the votes of the House of Commons had practically settled the question of compensation; as it was impossible that the Lords should exercise their power merely to prevent justice being done to the officers of the Army; and, this being so, as the permanent continuance of the purchase system had evidently become impossible, and as any unnecessary delay in putting an end to it must have been most injurious to the organisation of the Army, and most unjust to those officers who might want to sell out during the period of transition, it did and does still appear to me, that the course which the Government took (after what I must always consider the ill-advised resolution of the House of Lords), was, as you express it, the least objectionable course which could be taken under the whole circumstances of the case.

Cardwell received this letter on the morning of Monday the 21st August, the day appointed for the Prorogation; and he read it in the House of Commons, while "Black Rod" was on his way from the House of Lords to request the attendance of the Commons there for that ceremony; it was even said that the doors of the House of Commons were shut for a few moments against that important personage, until the reading was finished. Whether that was so or not, I had in this way, during my absence in Scotland, the last word of the session. Cardwell mistook my meaning on one point, which led to some further correspondence between us.[1] He thought I meant to say that I should have preferred the issue of the Royal Warrant at the beginning instead of the

[1] He said that, "had it not been for the Ulysses of Pembroke Lodge," the difficulty with the Lords would not have arisen.

end of the business; and he supposed me to have overlooked the necessity for parliamentary authority, to enable compensation to be made to the officers for sums paid for commissions in excess of regulation prices. But what I said was, not that the Warrant should have been issued before it was ascertained that Parliament would grant the necessary compensation, but that it should have been from the first contemplated and announced that when Parliament had voted the money, a warrant of that kind would be issued. Whether the measure of compensation ought to be according to regulation or over-regulation prices was not, in that point of view, material; justice, no doubt, was against standing on the letter of regulations which had been long, systematically, and with the knowledge and tacit consent of all military and civil authorities, disregarded: but the necessity for obtaining the consent of Parliament to make compensation would have been the same, even if a course less just had been followed.

We spent a pleasant time that year at North Berwick, the most healthful of Scotch watering-places, with Tantallon Castle, the Bass Rock, Dunbar, and many other spots full of historical, poetical, or romantic associations in its neighbourhood. We made visits, delightful to us all, to Leslie, Roslin, Hawthornden, and the Falls of the Clyde; also to Melrose, the Eildon Hills, and Abbotsford, where James Hope Scott was living; to the Western Highlands, going by Glasgow and the Crinan Canal to Oban, Ballachulish, and Glencoe, Invergarry, and

Lochletter. We went to the foot of the Chisholm's Pass, by Lochs Beneveian and Affrick, and through Strathglass and the Beauly valley to Dingwall, and by the Skye railway to Strome Ferry. There we saw, under a blue sky which Italy could not have surpassed, the whole range of the jagged peaks of the Skye mountains. On another day, crossing Loch Carron, we visited Court-hill in Applecross; and my eldest daughter filled another portfolio with memorials, more interesting even than those of the preceding year.

The place of Attorney-General was vacated by Sir Robert Collier in November 1871; and it was a matter of course that Sir John Duke Coleridge, whose ability and success at the Bar were more conspicuous than Collier's, and who had done good service as Solicitor-General, should succeed him. He wrote to me on that occasion a characteristic letter, saying that he would have been glad to see me return to my old place, and would have been willing to serve under me, and had urged that arrangement upon the Government. This, on his part, was most friendly and generous; but for me to have desired or even thought of such a thing would have been the reverse; and it was impossible that such an idea should have been entertained by the Government.

At the beginning of the session of 1872, Mr. Gladstone chose me for the agreeable duty of proposing Mr. Brand as Speaker, on the retirement of Mr. Evelyn Denison. Not long afterwards I was

requested to undertake a more arduous task: the defence of the Government against a censure moved by Mr. (now Lord) Cross for the appointment of Sir Robert Collier as a paid member of the Judicial Committee of the Privy Council. This I undertook. By a curious coincidence, the elder Sir John Coleridge had suggested the same thing, in a letter to my brother Edwin, on the 24th of January.

An Act[1] had been passed at the end of the preceding session authorising the appointment of four salaried members of the Judicial Committee, who were to be qualified by being, or having been, Judges of the Superior Courts at Westminster or Indian Chief-Justices. Three of those places were filled in a manner to which no exception could be taken — two by Sir James Colvile and Sir Barnes Peacock, who had the Indian qualification; and the third by Sir Montague Smith. To the fourth, Sir Robert Collier was appointed; and, to qualify him, he was made a Judge of the Court of Common Pleas upon the occurrence of a vacancy there, and took his seat in that Court, but did not remain there for more than two days. This was regarded by many as in substance contrary to the Act of Parliament; and Sir Alexander Cockburn, in a strongly-worded letter of remonstrance to the Lord Chancellor, gave to the attacks with which the Government were threatened the authority of his eloquence and his office. Public opinion went with him: the view

[1] 34 & 35 Vict. cap. 91. It received the royal assent on the 21st August 1871.

taken was, that the qualification intended by the Statute was more than formal; that, if the letter did not require judicial experience, the spirit did. The matter was brought forward in the House of Lords, on the 16th January 1872, where, on a division, the Lord Chancellor escaped censure by a majority of only one; Lord Cairns, notwithstanding their friendship, speaking and voting against him. The attack was renewed in the House of Commons three days afterwards: and it could not have been resisted, if there had been no special circumstances in the case.

No one who knew Lord Hatherley could suspect him of lending himself to a device for the promotion of the Attorney-General to an office (superior indeed in dignity, but not in emolument, to that of a Puisne Judge in the Courts at Westminster) at the cost of breaking faith with the law. His concurrence in what was done was necessary: for the Judgeship of the Common Pleas was in his patronage, as the appointment to the Judicial Committee was in Gladstone's. Gladstone might perhaps be accused of subtlety and hair-splitting, where law was in question; but not so Lord Hatherley, whose intellect was of a straightforward practical kind. The fitness of Sir Robert Collier to perform the duties of the office to which he had been appointed was not in question; if the place of Chief-Justice of the Common Pleas had been vacant, his claim, as Attorney-General, to succeed to it, would have been allowed. What had been done was therefore not wrong in substance,

apart from law : nor was it wrong in law, apart from substance; for he was certainly, in law, a Judge of the Common Pleas, when he was transferred to the Judicial Committee. The ground of the objection really lay between law and substance : it was founded upon a view of the intention of the law, not expressed in the law itself, which might hold good under some circumstances, but not of necessity in all.

The primary intention of the Statute unquestionably was, that the Judicial Committee should obtain that accession of strength which it needed; and what had happened was, that the place had been offered in succession to several Judges of the Courts at Westminster, those whose experience, learning, and reputation made them, in the opinion of the Lord Chancellor and the Prime Minister, most eligible for it; and had been refused by them all. The ground on which they refused was, that Parliament, while giving the paid members of the Judicial Committee salaries equal to those of Puisne Judges, had allowed them no clerks; officers, of whose services they had the benefit as Puisne Judges, and who had claims on their personal consideration which their successors, if they were transferred to the Privy Council, could not be expected to regard. That was a ground, on which others were as likely to refuse, as those to whom the offer had been made. To drag such an office as that of the highest Appellate jurisdiction in Indian, Colonial, Admiralty, and Ecclesiastical causes, through the dirt, by passing it down the whole list of judges until some one, whether of long or short

experience, of great or small reputation, could be found to accept it, could not be required by the spirit, if it was not by the letter, of the Act. If this had been done, and if all had refused, it would have been unreasonable to call in question the propriety of taking the best man at the Bar who would be willing to accept a Puisne Judgeship if vacant, upon the understanding that he should be at once transferred to the Judicial Committee. And the same course might equally be justified, when the object was to prevent the degradation of the office by the rejection, on the part of every judge having special fitness for it, of the terms which the Legislature thought it right to offer. These were the circumstances under which the Government acted; and, under such circumstances, Sir Robert Collier's appointment did not really offend against the spirit or substance of the law.

This was my line of argument; and the House of Commons endorsed it, by a majority of twenty-seven in favour of the Government. I did not contend, nor did I think, that, without some such reasons as these, the selection of a barrister, even of the greatest eminence, for the new office, and making him a judge *pro formâ* (as those chosen for Common Law Judgeships were then always made Serjeants) would have been defensible.

Collier was not only an honourable man, but one who wished to stand well with public opinion; he felt the opposition to his appointment very much, and consulted with myself (and probably with others)

whether it might not be right for him to resign it. I dissuaded him from doing so. He retained it till his death; and I am not aware that fault was ever found with his manner of performing its duties.

CHAPTER X

THE TREATY OF WASHINGTON

1871

The negotiations which ended in the treaty of Washington took place during the first four months of 1871. I was frequently consulted by the Government during the course of them; and, though I had no responsibility for initiating them, or for the basis on which they were then set on foot, I had that of assenting to some things, and acquiescing without remonstrance in others, to which five years before I should have been strongly opposed.

Those who study the history of the questions, which have arisen from time to time since the Peace of 1813 between this country and the United States, can hardly fail to be struck by a difference in the habitual attitude of the two Powers. Great Britain has always been pliable as to such questions; having indeed every motive, both of sentiment and of interest, for being and remaining on the best terms possible with the United States. Of that disposition on our part American statesmen have understood how to take advantage; not reciprocating it in their

diplomacy, whatever may have been their private feelings; and the gain to us, in the way of an improved state of political relations between the two countries, from the concessions which we have generally made to them, has been less substantial and less permanent than might have been desired, and was on each occasion hoped for. We have done, to get rid of difficulties with them, much more than they would have done for us; and we have endured from them things which they would never have endured from us. It has become with us a maxim of policy, that all controversies with the United States must be in some way amicably settled; with the effect, as ought perhaps to be expected, of sometimes stimulating the growth and accentuating the sharpness of such controversies.

During the American Civil War, and as long as Lord Russell was at the Foreign Office or at the head of affairs, our Government, conscious of no wrong towards the United States, refused to admit the principle of claims founded upon the assumption that we were responsible for the acts of Confederate cruisers constructed for or sold to the Confederates in this country, or to treat the question whether we had acted in good faith towards the United States in our public conduct as neutrals, and had fulfilled our moral obligations towards them, as a proper subject for arbitration. In that refusal we took our stand on the doctrines and practice of international law, as generally (until then) understood; and we followed the example of the United States themselves; who,

in prolonged controversies with Portugal and Spain, had rejected with unflinching resolution, and had refused to refer to arbitration, claims founded on exactly the same principle, and of a like nature, which had arisen under circumstances certainly not less favourable to the claimants.

For my own part I never doubted that we should have been justified in maintaining against the United States the ground taken up by Lord Russell, as firmly as the United States maintained theirs against Portugal and Spain; and I think it is a fair inference from the course of the subsequent negotiations, and from the conditions on which alone their negotiators consented to the Arbitration provided for by the Treaty of Washington, that those among their jurists who best understood the matter felt the importance, in order to get the principle for which they contended admitted, of either complicating the question by irrelevant issues, or to some extent prejudicing it by the terms of reference. It is too late to speculate on what might have happened if Lord Russell's ground had never been departed from; but he was not the only man who saw danger, as well as loss of dignity, in any departure from it which might encourage on the other side of the Atlantic the idea that we should always be ready to pay any price for peace with our kinsmen. Arthur Gordon, writing to me from New Brunswick (not on this, but on other subjects) in March 1863, said:—

> With respect to the United States, whilst I fully subscribe to all you say, as to the necessity of avoiding all cause of provoca-

tion, and affording no ground for quarrel, I am inclined to think we take rather too low a tone in our intercourse with the Federal Government. . . . We seem not only to dislike, but to fear, a collision with the United States; and, on this side of the water, our moderation is attributed to fear alone.

Lord Russell wrote to me on the 26th April 1865:

Lord Lyons[1] says that, if we do not resist this demand (for compensation on account of the acts of the *Alabama*), we shall never have a moment's peace.

After the end of the war there was a pause of more than a year, during which those claims were not pressed; there were signs, however, of the growth of a feeling hostile to Great Britain in the United States, promoted (as Arthur Gordon[2] told me) by suggestions in their newspapers, "that England's conduct in the Danish quarrel showed that she would never fight again." On the 23rd of February 1866, Mr. Labouchere[3] called the attention of the House of Commons to the state of our neutrality laws, and Mr. George Shaw Lefevre spoke in favour of referring the *Alabama* claims to arbitration. I said, in answer to him:—

The House must feel, that in all cases where nations are concerned there are two principles, which never must be lost sight of. One of them is that a nation must not compromise its own honour, by allowing that there is a question of honour to be submitted to an arbitrator, when really there is none. It would be impossible to submit this case to an arbitrator without imputing a breach of faith and honour to this country; because all must admit that, if you did your best in each case, there can

[1] Then British Minister at Washington.

[2] In a letter from New Brunswick, 27th February 1865.

[3] Then M.P. for Windsor.

be no claim. Secondly, it cannot be denied that it would be a most dangerous precedent, if any nation should hold itself responsible for evils which it could not repress. To say that neutral nations should be responsible for all acts done by subjects which their Government cannot prevent, would be to throw on neutral nations the expenses of maritime wars carried on by their neighbours. That is a principle which cannot be admitted; and, if there be any case in which we are warranted in thinking that we have good ground for adhering to a contrary principle, it is when we are dealing with a great nation, itself of high honour and good faith, which has always been most jealous in upholding its own national laws, but which has not been more successful than ourselves; and which on many occasions, over and over again, persistently and emphatically refused to recognise such claims on the part of Portugal and Spain, and declined to submit those claims to arbitration.

So stood matters until the change of Government in 1866. The pendulum, in this country, had then swung round. Wonderful was the goodwill towards the victorious party, which some of those whose sympathies had been with the South began to display. The popular feeling, as Lord Stanley, the new Foreign Secretary, said in debate,[1] "was so strong, that a tendency might be detected, to be almost too ready to accuse ourselves of faults we had not committed, and to assume that, on every doubtful point, the decision ought to be against us." Lord Stanley had shown, by silence in every debate upon questions relating to our neutrality during the war, that he was not one of those—some of them holding high office in the Conservative Government—who had Southern partialities, and did what they could by their speeches to increase the difficulty of enforcing

[1] 6th March 1868.

the Foreign Enlistment Act. He told Mr. Adams, in their first official interview,[1] that "he presumed his sentiments towards the United States had been all along well known; he had always favoured the cultivation of friendly relations with them; and it had been to him a cause of regret that they should have been at all endangered during the late struggle by ill-considered speeches made in Parliament."

It was under these circumstances that Mr. Seward, on the 27th August 1866, reopened the question of the *Alabama* claims in a despatch to Mr. Adams,[2] in which great prominence was given to the complaint, that the Queen's Proclamation at the beginning of the war, by which the Southern States were recognised as belligerents, was "an act of wrongful intervention, a departure from the obligations of existing treaties, and without sanction of the law of nations." The United States "insisted in the beginning, and had continually insisted, that the assumption of that attitude unnecessarily and prematurely would be an injurious proceeding, for which Great Britain would immediately come under a full responsibility to justify it, or to render redress and indemnity." That despatch made the wrong, so alleged to have been done by the Queen's Proclamation of Neutrality, the foundation of all the claims; representing the aid given by British subjects to the insurgents "with supplies, arms, munitions, men, and many ships of war," as consequences of that original wrong.

[1] 12th July 1866 (American Papers, presented to Congress).

[2] Parliamentary Papers (North America, No. 1, 1867, pp. 2, 3).

The correspondence which followed was continued at intervals till the 29th November 1867. In it, Lord Stanley offered to refer to arbitration the question of the moral responsibility of the British Government (on the assumption of an actual state of war between the United States and the Confederates) for the acts of the *Alabama* and other ships in respect of which complaints had been made; but he declined to refer, directly or indirectly, the question of our right to issue the Queen's Proclamation of Neutrality, by which the existence of a state of war between the two belligerent parties was recognised. Mr. Seward refused to agree to a reference so limited; and the negotiation was broken off on that point. Afterwards there was a debate upon the subject in the House of Commons,[1] upon a motion by Mr. George Shaw Lefevre; when Lord Stanley said, with reference to our Neutrality Proclamation, that "by a peculiar process, which he did not pretend to explain, the grievance seemed to have been gaining importance in the minds of American statesmen, and of the American public, just in proportion as on this side of the water had grown up a feeling of desire to remove all other causes of difference." He added, with less than his usual prudence, that "neither the Government, nor the House, nor the country, would be disposed to stand out upon any mere matter of form"; and that "he had never concealed his opinion that the claimants, or some of them at least, under the reference proposed by us, were very likely

[1] 6th March 1868.

to make out their case and get their money; to us, the money part of the affair was inexpressibly small."

Mr. Seward had at that time brought forward other matters, some of which,—the questions as to Naturalisation, and the St. Juan Boundary,—he represented as of greater urgency than the *Alabama* claims; as to which, he said, his decision would be much influenced by what was done as to Naturalisation. An agreement was arrived at on those other questions; and Lord Stanley and Mr. Reverdy Johnson then signed a convention[1] for the settlement of all claims of subjects of either country upon the other, by a mixed Commission, to sit in London; special provision being made for the *Alabama* claims, which it was proposed to refer to the arbitration of some Sovereign or Head of a friendly State, in the event of there being any difference of opinion about them among the members of the mixed Commission. Mr. Seward telegraphed to Mr. Reverdy Johnson, that these terms were "entirely acceptable," if the place for the sittings of the mixed Commission could be changed from London to Washington; which was agreed to. But afterwards, anticipating difficulty with the Senate, he objected to "any prejudicial discrimination between the *Alabama* and any other claims"; and asked for the omission of all the special provisions as to the *Alabama* claims. Lord Clarendon, who had succeeded Lord Stanley in office, desired to meet Mr. Seward's wishes; and another Convention, approved by Mr. Seward, was signed on the 10th of January

[1] 10th November 1868.

1869. It omitted the special provisions to which objection had been made;—providing, instead of them, that any claims whatever, as to which all or any two of the members of the mixed Commission might think it desirable, should be referred to the arbitration of a Sovereign or Head of a friendly State. The Senate of the United States all but unanimously rejected that Convention; Mr. Sumner, the Chairman of their Committee of Foreign Relations, opposing it in a most violent speech,[1] in which he insisted on our recognition of the belligerency of the Southern States, and the supply of arms and ammunition by British subjects to those States, as constituting (in addition to the captures made by the *Alabama* and other Confederate cruisers) a foundation for immense and indefinite public[2] claims of the United States on this country, in respect of the prolongation of the war, the decline of the American shipping trade, increase on the rates of insurance, and other matters. General Grant and Mr. Fish then took the places of Mr. Andrew Johnson and Mr. Seward, as President and Secretary of State of the United States. They adopted (or professed to adopt) Mr. Sumner's opinion, and declared their concurrence in the decision of the Senate; and Mr. Motley, who succeeded Mr. Reverdy Johnson as American Minister here, was instructed

[1] Mr. Reverdy Johnson's opinion of that speech (expressed in his pamphlet of 1871) was, that it was "extravagant and unjust towards England"; and he added that he "had reason to believe it so seemed to the intelligent men of the country"—*i.e.* of the United States.

[2] The Convention provided only for claims of *subjects* of either country upon the other.

to communicate their views to our Government, and to throw it upon us to make some new proposal, at whatever our Government might consider a convenient time.

After all this had happened, it was no longer possible for any British Minister to refuse to apply the principle of international arbitration to the *Alabama* claims; the only question open was, on what terms it should be done. Lord Granville, at the beginning of 1871, proposed the appointment of a Joint High Commission, to "treat of and discuss the mode of settling" other questions between ourselves and the United States relating to British North America. Mr. Fish stipulated, that the same Commission should also consider how "the claims generically known as the *Alabama* claims" might be settled. Lord Granville agreed; and a joint High Commission was appointed. It had been several times suggested, on our part, that it might be for the interest of both Governments to agree upon some rules, as to maritime neutrality, for future observance. Our Foreign Enlistment Act had been strengthened, so as to remove difficulties which previously stood in our way. Lord Granville, in his instructions to the British Joint-Commissioners, repeated this suggestion: and it had important results in the arbitration which followed; though whether we shall ever gain any equivalent advantage from it, if engaged in a war in which the United States are neutral, remains to be seen. The Neutrality laws of the United States are, at this moment, no better or stronger than they

were in 1818, when those claims of Portugal and Spain, which the Government of the United States persistently rejected, arose.

The British Commissioners were eminent men; all of them, except Lord de Grey,[1] the Chief Commissioner, had special qualifications for that duty. Lord de Grey was not specially conversant with international questions; but he was honourable, liberal-minded, and of sufficient experience in public affairs to be thought worthy of a place in the Cabinet. Mountague Bernard was among our ablest jurists: Sir Edward Thornton and Sir John Macdonald (then, and for a long time afterwards, Prime Minister of Canada) well understood the questions to be considered, from an American point of view: and Sir Stafford Northcote was the most judicious and practical of Conservative statesmen. If the treaty which they negotiated was more one-sided, and in some respects more loosely worded than might have been desired, it is just to them to remember that the place of meeting gave their American colleagues (one of whom was the President's Chief Minister, Mr. Fish) the advantage of being able to communicate freely at all times with their own Government: while they were obliged to correspond with the Cabinet in London either by letter or by telegraph; of which modes of communication the former would have been safer, but the second was preferred to avoid dangerous delays.

[1] Afterwards created Marquis of Ripon, in recognition of his services on this occasion.

When the Joint Commission met, the British Commissioners[1] at once offered to refer the *Alabama* claims to arbitration. The American Commissioners answered that they could not consent to such a reference, unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon. To this, the British Commissioners had no authority to agree. They declared themselves willing to consider what principles should be adopted for observance in future; but they thought the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them, after hearing such arguments as might be necessary. The American Commissioners were equally willing to consider what rules should be adopted for the future; but they would only do so upon the understanding that any such rules should be held applicable to the facts in respect of the *Alabama* claims. They proceeded to formulate rules (of which the first three were embodied in the treaty) which they desired to see adopted for the instruction of the Arbitrator, and laid down for future observance by the two Governments. Their form was considered by the Joint Commission at several meetings; all the questions of substance being reserved by the British Commissioners for determination by their Government.

It was then that I was taken into counsel by Lord Granville, Lord Hatherley, and some other members of the Government, at a conference held in the Lord

[1] 8th March 1871.

Chancellor's room at the House of Lords. They were disposed to yield a good deal to the United States, rather than let this opportunity of a settlement fall through: it was discussed even whether it might not be expedient to offer a money payment without arbitration. To me the course of agreeing to new rules, properly expressed, upon the understanding desired by the Americans that they should be retrospectively applied in the arbitration, appeared preferable to a concession by which this country might seem to admit that it had been guilty during the Civil War of a breach of the duties of neutrality. We might not (as Lord Stanley had said, and as everybody else seemed to agree) care for money in the matter; but we did, and ought to, care for our public honour. If we consented to the proposal of the United States Commissioners, we might go handicapped into the arbitration (as we might have done under any circumstances, after what Lord Stanley and others[1] had said in Parliament as to its probable result); but we should not refer to the arbitrators any question affecting our good faith or honour. The risk, whether greater or less, before the arbitrators, would be caused by translating retrospectively into the form of a hypothetical international Convention, which did not exist when the events happened, a duty which we had recognised as incumbent upon us under our own laws, and which we had always professed and endeavoured to perform with as much diligence as was

[1] Particularly Mr. John Stuart Mill, in the debate of 6th March 1868 (*ante*, pp. 208, 209).

reasonably practicable in affairs of domestic government: and this, so far as national honour was concerned, seemed to me to have some advantages, even over a perfectly open arbitration, before arbitrators who might possibly be influenced by the teachers and advocates of new ideas concerning international law.

The Government adopted this view; and on the 5th of April, when the Joint High Commission resumed its sittings, the British Commissioners made a statement (afterwards embodied in the Treaty), that Her Majesty's Government could not assent to the proposed Rules as a statement of principles of international law which were in force when the *Alabama* claims arose; but that, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, they agreed that, in deciding the questions between the two countries arising out of these claims, the arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the Rules, which (three in number) were in future to be held internationally binding between the two countries, and were to be recommended by them for adoption to other nations.[1] Those Rules, as understood on both sides, coincided in substance with the prohibitions of our Foreign Enlistment Act of 1819, according to the interpretation of it on which Lord Palmerston's Government had acted during the Civil War: they required the

[1] They have not, to this day (May 1892) been adopted or acceded to by any other nation.

use of "due diligence" to prevent their violation, when a neutral Government might have "reasonable grounds to believe" that any such violation was intended.

Reports which appeared in some American newspapers of the proceedings of the High Commission reached Lord Russell, and caused him, on the 13th April 1871, to write me the following letter :—

I see by the newspapers that a new change has come over the dream of the *Alabama*. The *Philadelphia Ledger* tells us that the Commission at Washington having agreed to a new Neutrality law, the *Alabama* captures are to be compensated for by England according to this new law. Now, I do not at all dispute, that the Report of Lord Stanley's Commission[1] may have laid a foundation for an improved Law of Nations. But I contend that our conduct—yours and mine—cannot be tried fairly by an *ex post facto* law. We had nothing to go upon but the law existing at the time we acted. No American Government will ever act in accordance with so preposterous a decision. I propose to ask some questions on the day after the House of Lords meets. We hope to be at Pembroke Lodge on Saturday, and I shall be obliged to you if you will write to me there, or come down for Sunday.

We could not go to Pembroke Lodge, so I answered him :—

I doubt whether the proposed terms of arrangement, as to the (so-called) *Alabama* claims, can at present have been brought to that stage at which it would be possible to make them public. I think, however, that I am in some degree able to form a correct idea of what they are likely to be, from communications confidentially made to me by some members of the Government; and, if so, I consider the terms of the announcement in the American newspapers as, to a certain extent, misleading. It is

[1] On the Neutrality Laws.

not, I think, improbable, that for the sake of settling these differences, and at the same time obtaining a reciprocal prospective engagement to the same effect from the United States Government, it may be proposed to authorise any arbitrator to whom the matters in difference may be referred to assume that, at the time of the late Civil War in America, this country had undertaken, upon receiving proper information, to use due diligence to prevent certain acts from being done, with reference to the equipment, etc., of vessels for purposes hostile to the United States. But I do not believe it will be found, that the description of those acts is proposed to be extended further than that construction of our then Foreign Enlistment Act, on which the Law Officers of the Crown insisted, and always advised the Government to act; and which two Judges of the Court of Exchequer, in the case of the *Alexandra*, held to be correct. It is no doubt true that two other Judges (carrying with them in the particular case the decision of the Court) differed from that view; but, so far as this point is concerned, I cannot think it would expose the acts of Lord Palmerston's Government to any unfair or injurious construction, if (supposing any arrangement of this kind to be made at all) the view of our law, on which they were advised to act, were assumed as the basis of the supposed undertaking. So far as reasons of policy go, it seems to me evidently beneficial to ourselves to obtain from the United States, if we can, a prospective engagement to that extent; and under our *present* Foreign Enlistment Act,[1] we have certainly sufficient powers to fulfil such an engagement on our own part, whatever difficulties we may have laboured under during the late Civil War. As to the obligations incumbent upon us by general international law, I do not believe that any assumption or admission whatever is intended to be made. Nor as to what would be necessary or sufficient to establish "due diligence," do I believe that it will be attempted to lay down any rule,—much less, that it will be proposed to assume the applicability, at that time, of the new powers since given to our Government by the Foreign Enlistment Act of 1870. How far an arbitrator, under such a form of reference as that which I think likely to be proposed,

[1] Passed in the preceding year, 1870.

might hold us answerable to the United States for any supposed default, really due to the then state of our law, I cannot undertake to say; but equal uncertainty, on that point, must have existed under the more open form of reference agreed to by Lord Stanley: and, for my own part, if we are to go to an arbitration at all, I greatly prefer doing so on terms which will at least secure to us, for the future, a definite and beneficial rule, binding, by express international engagement, upon the United States, to running the risk, which we should have done under Lord Stanley's Convention, of having an award against us (with possibly large damages), for some supposed default, without getting any equivalent whatever, or binding the United States for the future to anything at all. I am, of course, quite alive to the distinction between the claim of a belligerent Power to have such a law as our late Foreign Enlistment Act honestly enforced in its favour, and a conventional engagement between two nations that each will use, in favour of the other, due diligence to prevent such proceedings as those against which that Act was directed. But to give our opponent before an Arbitrator (hypothetically, and for reasons of policy) the advantage, such as it is, involved in the substitution of the latter basis of argument for the former, would rather (as it seems to me) *save*, in case of an adverse award, than compromise in any event the honour and dignity of our country. Entertaining this opinion, and feeling satisfied that there is nothing in the principle of such an arrangement which ought to be understood as admitting any view different from that which you and I have always maintained, either of the duties of Neutrality by which we were really bound during the American War, or of the manner in which our Government fulfilled those duties, I have held in my confidential communications on the subject with the present Government,—and should doubtless, if necessary, hold in Parliament,—the same language in which I now express myself to you. I hope your own opinion may not, on consideration, be materially different: for few things, I can assure you, would be more unacceptable to me, than to find myself differing from you, in any substantial point, on this question.

This letter, though it did not satisfy Lord Russell,

had some effect in mitigating his opposition to the course taken by the Government.

Lord Russell said :—

I am very much obliged to you for your letter, but much concerned to find that you are so far committed as you appear to be. . . . I am happy to find that I quite agree with you on the footing we ought to stand, namely, on the solid ground of the opinion of the Law Officers in the case of the *Alexandra*.

He went into some details as to the circumstances of our failure in that case, and also as to those under which the *Alabama* escaped seizure; and then continued :—

Hitherto, then, we have proceeded on our own views of the meaning of our own municipal Acts. It appears now to be in contemplation, not (as you believe) to make our nation liable for contravening a sense of the Law of Nations not in force during the Civil War, but to submit to foreign arbitration the question of "due diligence" in applying our own Acts then in operation. This appears to me to be the question discussed between Lord Hawkesbury and Napoleon, First Consul, at the beginning of this century, and of which there remains a record in the correspondence contained in the last volume of the Parliamentary History. Lord Hawkesbury refused positively to accept a foreign version of our Alien Act. But that which we would not yield to *Larissæus Achilles*, we are about to yield to Mr. Fish ! ! ! This concession appears to me destructive of our position as a nation: and, so far from thinking that any conventional engagement between the two nations will strengthen our position, I think that (just as Lord Stanley's Convention was, leaving us open to dangerous claims) such an engagement as is now proposed will leave us exposed to all those wiles and subtleties, of which the American lawyers are such great masters. Holding this opinion, I must, when the proper time comes, express it in the House of Lords. But I shall wait till I can no longer be silent. I will not willingly be a party to the sacrifice of English honour.

If my view upon the question of honour was not, under the circumstances, exactly the same as that of Lord Russell, I could not but admire and sympathise with his noble spirit. He had before, in writing to Lord Granville on the 13th of March (a letter of which they both sent me copies) taken up the same ground, saying: "The money does not signify: but to allow the United States to override our law would be destructive"; and:

As Mr. Fish charges negligence and carelessness against our officials, I think it would be right for us to say, that we are quite ready to have a fair inquiry, to ascertain whether there was negligence or carelessness in respect of the *Alabama;* but that such inquiry must be consistent with our independence, and must therefore be necessarily a Court or Commission composed entirely of the Queen's subjects. To allow any foreigner to be a judge of our municipal law, and decide what is good evidence to go before a jury, to supersede in this respect our own law officers and our internal administration, would be to give a stretch of authority to foreigners which would be destructive of our position as a nation.

The opinion which he formed as to the "wiles and subtleties of the American lawyers," to which we might be exposed under the contemplated engagement, certainly received confirmation from the claims made, and the tone assumed, after the treaty had been concluded.

The danger and inconvenience of negotiating concerning matters of the first national importance by telegraph were illustrated by the communications which passed backwards and forwards between the British Commissioners at Washington and our Government during the sittings of the Joint High

Commission. They were very frequent, on matters of substance, matters of form, and even words and phrases: and, when all was done, the Rules, on which so much was to turn, were so loosely expressed, as to leave some points uncertain, which it was dangerous not clearly to define. I was myself instrumental in preventing some modifications of the language of the treaty with respect to the Rules, which would have been inconsistent with my reasons for assenting to the substance of the arrangement. It was not, however, until after the treaty had been signed[1] at Washington, and during the interval before its ratification, that my attention was directed to the uncertainty and ambiguity of the language of the second Rule, thus expressed:—"[A neutral Government is bound] not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, *or for the purpose of the renewal or augmentation of military supplies or arms*, or the recruitment of men." The words, "renewal or augmentation of military supplies or arms," without any express restriction to the armament of ships of war, seemed capable of being extended to *all* military supplies or arms,—in fact to the whole traffic in articles contraband of war sent out to a belligerent Power from the ports or waters of a neutral State. Lord Hatherley thought otherwise: but if no step had been taken to exclude such a construction, the practical determination of that question would have been in the hands of men unlike Lord

[1] 8th May 1871.

Hatherley. I felt obliged to insist upon the necessity of having this point cleared up: saying, in a letter to Lord Granville of the 20th May, that I was "forced, most reluctantly, to the conclusion that, unless that article could be rectified, the ratification of the treaty, in its present form, would be a worse evil than the failure of the negotiation."

It is not (I said) difficult to see that, failing any sufficient proof of neglect under the first Rule (as, with respect to every cruiser complained of by the Americans, except possibly the *Alabama* alone, they necessarily must fail), the Americans will insist before the Arbitrators upon the use made by the Confederates of the ports of Liverpool, Nassau, etc., for their supplies of arms and ammunition, as at variance with Rule 2: and will thus endeavour to draw into the net *all* their maritime losses, even by ships such as the *Shenandoah*, as to which no information was ever given to our Government. It lays upon us a rule of obligation for the future, which is not, and never has been, within the limits of the prohibitions of our municipal law, and which we should be just as unable to fulfil under our present, as under our former Foreign Enlistment Act. And it does this in such a manner as to unsettle the whole fabric of international law for the future (for these Rules are laid down as binding ourselves henceforth, whenever and wherever we are neutrals, and are to be recommended by us for adoption to all other countries),—upon a point, that of the use of neutral ports for supplying a belligerent with arms, etc., on which hitherto all authorities on international law have been agreed; but on which, nevertheless, belligerent Powers have constantly been found so sensitive, that nothing but a very clear state of international law upon the subject would have prevented it from being the source, over and over again, of disputes as troublesome as that about the *Alabama*. We do not even secure, by this Rule, as between ourselves and the United States, any safe, certain, and convenient standard of practical obligation for the future. Vagueness and uncertainty of application is almost the worst vice which can be found in a diplomatic instrument of this kind:

and this Rule, as now expressed, has that vice in a most extraordinary degree. Almost any claim may be founded upon it which suits the purpose of a belligerent aggrieved by any facilities of obtaining arms enjoyed by his enemy: and, on the other hand, a neutral may insist upon almost any limitation of it which suits his own convenience. It would, I am satisfied (if retained as it stands), be used, in the first place, as an instrument for shifting the ground upon the *Alabama* claims from the particular to the general question, and for dealing with that general question in a manner which Her Majesty's Government never can have meant to authorise; and, hereafter, as an apple of discord between neutral and belligerent nations, out of which a plentiful crop of future *Alabama* questions may spring up. I cannot, personally, agree to the acceptance by Great Britain of such a responsibility as this; and, if the United States really mean no more than we do, I think it cannot be too late to substitute a Rule, really corresponding in substance with the eighth section of the old Foreign Enlistment Act.

These remonstrances were effectual. It was at first sought to agree upon a change, such as I had suggested, in the language of the Rule; but this, after some negotiation, was thought less convenient than a formal declaration by the President of the United States, to be officially communicated to our Government, of the sense in which this second Rule was accepted and understood, and would be acted upon, by the United States. That method of solving the difficulty being adopted, Mr. Gladstone was enabled, in answer to a question which I put to him on the 13th of June, to inform the House of Commons that the second Rule was understood by Her Majesty's Government, and by the British and American Commissioners, as "applying solely to vessels cruising or carrying on war, or intended to cruise or carry on

war, against a belligerent, and not to the case of military supplies or arms exported for the use of a belligerent from neutral ports or waters in the ordinary course of commerce"; and that General Schenck, the Minister of the United States in this country, had been authorised to state that the President of the United States understood the Rule in the same sense, "and would be the first, not only to admit and allow, but to contend for, that construction of it." The understanding as to the second Rule, so arrived at, was recognised and adhered to on both sides in the arbitration which followed.

On the 4th of August 1871, Sir Charles Adderley[1] brought the subject of the Treaty of Washington before the House of Commons; and I made a speech, recapitulating the history of the transactions out of which it arose, vindicating the conduct of Lord Russell and of Lord Palmerston's Government, and explaining my reasons (the same in substance as those which I gave to Lord Russell on the 14th of April), for being, on the whole, content with the Treaty, and preferring it to the former conventions signed between Lord Stanley and Lord Clarendon and Mr. Reverdy Johnson.[2] The House on that occasion honoured me with a remarkable, and (as far as I know) unprece-

[1] Afterwards Lord Norton.

[2] Mr. Reverdy Johnson did me the honour to reply to this speech, in a pamphlet published at Baltimore in 1871; which (so far as it referred to the Convention negotiated by himself) confirmed rather than displaced my reasons for preferring the settlement made by the Treaty of Washington; though he disputed the validity of those reasons.

dented compliment. It was a day of morning and evening sittings; and, by the standing orders, it was necessary that the debate should be closed, and the House rise, at a quarter before seven o'clock. When that time was reached, I had not more than half finished what I desired to say: and, to give me the opportunity of concluding it, Colonel Wilson Patten[1] suggested that, "considering the importance of the subject and of the speech, and that it was so desirable to preserve the continuity of both, the debate should be resumed at nine o'clock"; to which the House agreed: and, after an interval of two hours, I resumed where I left off.

Lord Russell wrote to me on the 7th of August: "I read with great interest your speech on the Washington Treaty, and was grateful to you for your defence of our Neutrality." He still expressed great misgiving as to the Rules, saying: "In point of fact, these Rules constitute the 'loaded dice,' with which our American friends have been allowed to play the game of hazard. As to the Act of Congress you suggest" (I had assumed, that the Congress of the United States would certainly strengthen their Foreign Enlistment Act, as we had strengthened ours), "I doubt if it will ever be passed. For two or three millions of indemnity, we shall obtain two or three years without a fresh quarrel." Another friend, Sir George Grey (then standing aside, like Lord Russell, from political warfare), wrote more hopefully: "I cannot help sending you a line to say with what

[1] Afterwards Lord Winmarleigh.

pleasure I have read your speech on the American Treaty. The only reason I have to regret having left town is, that I did not hear it. Your vindication of the conduct of the Governments of Lord Palmerston and Lord Russell was complete; and, coupled with this, your approval of the Treaty is most satisfactory, and will, I hope, have a very useful effect."

Looking back, I think that neither Lord Russell's anticipations, nor my own, have been fully realised—his, perhaps, more nearly than my own. I was not myself under any illusion as to the probable result of such a process as that of international arbitration, even without, and still more under, the new Rules; but I did reckon, as the result of such a treaty, upon a more cordial state of the public relations between the two countries than we have since experienced on any occasion which could put it to the test.

CHAPTER XI

THE GENEVA ARBITRATION—INDIRECT CLAIMS

1872

After the ratification of the Treaty of Washington, on the 15th of July 1871, Lord Granville wrote to me, asking me to act before the Tribunal of Arbitration as Counsel for the British Government. The necessary documents in the nature of pleadings and *pièces justificatives*, were to be prepared, under my superintendence, by Mountague Bernard and Lord Tenterden, the chief Permanent Under-Secretary of the Foreign Office; and I was to conduct the arguments at Geneva, written or oral, as might be required. It was then expected that the sittings of the tribunal would be so arranged as to require my presence and that of Chief-Justice Cockburn (the British Arbitrator), at Geneva in the Long Vacation only; which would have been to both of us convenient: and on that understanding I accepted Lord Granville's proposal. When it turned out, early in the following year, that this expectation would not be fulfilled, I ventured to remonstrate: but Lord Granville put the

matter before me in such a way that it was impossible to recede.

Sir John Taylor Coleridge wrote to me on the 6th of November 1871, congratulating me on the honour done me: "John[1] mentioned before he left us, that you were going to Geneva as counsel for the country, in the reference (so to call it) between us and the States. There is nothing, I think, in the whole of your great professional career, on which I so much congratulate you; nothing on which I should so much have prided myself, if I had had the qualifications requisite for the discharge of such a duty. It moved me much, and I cannot help telling you so."

The Arbitrators met at Geneva on the 15th of December 1871, for the formal purposes of choosing a President, arranging the order of proceedings, receiving the printed "Case" of each party (with the documents appended to it), and fixing the times at which "Counter-cases," and Summaries of Arguments, were to be put in. The 15th of April was fixed for the "Counter-cases"; and the 15th of June for the Summaries of Arguments, and for the meeting to proceed with the business of the Arbitration. The Government of the United States appointed Mr Adams their Arbitrator: and they took the unusual step, in this first stage of the proceedings, of publishing their "Case" to all the world: which made it necessary for our Government to do the same.

In the settlement of the British "Case," which Mountague Bernard, with Lord Tenterden's assistance,

[1] His son, the Attorney-General.

had prepared, I took part; and it cost me, as well as my colleagues, much time and labour. Its tone was studiously respectful towards the United States; no pains were spared to avoid the use of any language which could wound the susceptibilities, or offend the high spirit, of a generous nation. We could not, indeed, avoid the necessity of referring to American precedents, including instances of want of success on their part in the enforcement of their Neutrality Laws; but we did so, not by way of recrimination, nor as imputing to them in any case bad faith, but solely to show what, between two such nations, "due diligence" must reasonably mean, and that there could not be one measure of it for the United States when neutral, and another for us.

In all these respects, the American "Case" was in the most marked contrast with our own. Of the quality of its arguments I do not speak; some of them had a strange sound, as proceeding from a Government to which despotic methods of action were as much unknown as to ourselves. But its tone was acrimonious, totally wanting in international courtesy. Of this, whatever we might have thought, we should have been prevented by self-respect from complaining: but the American "Case" insisted, over and above what we understood as the "*Alabama* claims," upon the same vast and indefinite "indirect" claims, of a public nature, which Mr. Sumner had urged before the Senate of the United States in 1869, and which, when the Treaty of Washington was ratified, we believed to have been excluded.

The virulence of tone might possibly have been the same, if those indirect claims had not been brought forward; but the motive for both seemed to be (as a more pungent critic[1] than myself expressed it) to frame a general Indictment against this country for its whole conduct during the war. This was not in accordance with our idea of the office of the Tribunal of Arbitration. The reference, by the Treaty, was as to the claims, "growing out of the acts committed by certain vessels, and generically known as the *Alabama* claims,"—those, and no others. The American Commissioners, at the meeting of the Joint High Commission on the 8th of March 1871, opened the discussion by distinguishing the two classes of claims; mentioning, first, "extensive direct losses in the capture of a large number of vessels with their cargoes, and in the heavy national expenditures in pursuit of the cruisers"; and secondly, "indirect injury, in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion." Of the former they said, that they were then valued, so far as known, at about fourteen millions of dollars: of the latter, that, "in hope of an amicable settlement," no estimate was made of them; "without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made." When, by the Treaty of Washington, it was agreed to refer the

[1] Lord Westbury.

former class of claims to arbitration, an "amicable settlement"[1] *was* made; and the event, in which a right to claim indemnification for the alleged "indirect injury" had been reserved, was one which could no longer happen.

If we had gone to arbitration in respect of those indirect claims, it would have been in the power of a majority of the five Arbitrators to mulct this country in more than the whole expenses of the war. Mr. Gladstone (I was told) endeavoured to form an estimate of the possible amount, putting together the different heads of loss to the American commercial marine, enhancement of the rates of insurance, and prolongation of the war; and arrived at a figure exceeding the sum total of our National Debt.

This was an unexpected situation, not easy at first to realise. When it came to be understood, everybody who had any rational concern for the interest and honour of the country felt, that this was not an arbitration into which we could ever have consented to go. War itself, forced upon us and not sought by us, would have been a preferable alternative.

The credit of having been the first person to press upon the Government the necessity of acting with decision and promptitude under these circumstances belongs to Lord Westbury. He wrote to Lord Granville, on the 7th of January 1872, that, "although he had entirely withdrawn from politics," they caused

[1] This was in terms recognised, in the exchange of courtesies between the British and American Commissioners, recorded in their last Protocol before the signature of the Treaty.

him the greatest anxiety; and he urged that the only proper course was "at once to refuse to treat these claims as matters of discussion before the Arbitrators." Lord Granville asked for my opinion, before communicating that letter to Mr. Gladstone and the Lord Chancellor. This I gave him, in a letter of the 10th January:—

Lord Westbury's letter (I said) relates to very serious matters, and it seems to me that the position in which this country is placed by the tone and substance of the American "Case," and the course which ought to be taken to keep the arbitration to which we have agreed within its proper limits, are subjects not unworthy to be considered, in good time, by the whole Cabinet. You know, that I myself rather acquiesced in arbitration because, after the Conventions between Lord Stanley and Lord Clarendon and Mr. Reverdy Johnson, and the authority given to Lord Ripon's Commission to go again into the matter, it seemed to me to be no longer possible to return to the position taken up by Lord Russell, than because my own judgment would have dictated that course. I doubt whether I should have acquiesced at all, if I had not given credit to the Government of the United States for some disposition to aim at a rational and practicable settlement in cordiality and good faith; which disposition I can no longer give them credit for, after seeing their "Case"—and seeing, further, that they have appointed Mr. Adams their arbitrator,[1] and have caused their "Case" to be given to the world at large, pending the arbitration,—a proceeding which has led, unavoidably I suppose, to the publication of our own "Case" in like manner. As far as I

[1] Mr. Adams had been the representative of the United States in this country when these claims first arose. It had been his duty to urge them on behalf of his Government, and whatever might be the natural tone of his mind, the selection of a gentleman who had been so prominently employed as an advocate in the question to act as one of the arbitrators was undoubtedly contrary to the traditional rules of judicial etiquette.

am concerned, Lord Westbury is not far wrong, when he says that nobody here would have been willing to go to arbitration upon such claims as these, advanced upon such grounds, if this "Case" could have been seen beforehand. That claims upon this country for, it may possibly be, several hundreds of millions sterling (for who can estimate the single item of loss in the carrying trade, to say nothing of war expenses?) should be referred to the decision of a Swiss, a Brazilian, and an Italian lawyer,—if lawyers even they are,—this alone would be a sufficient cause for disquietude. For who can guarantee the wisdom or the virtue of those three men, or say what direct or indirect political influences, hostile to this country or favourable to the United States, may be brought to bear upon them, or some of them (two would be enough), by those who have manifested the *animus* displayed in the concoction and publication of this "Case"! The stake is much too large for any arbitration; just as it would be, if the dominions or the status among nations of Great Britain were proposed to be referred to arbitration. You will understand, from what I have said, that I look upon the "Case" as an attempt to evade and enlarge the limits within which the subject-matter of the reference to the arbitrators was intended to be confined by the Treaty of Washington, and to found enormous and intolerable claims upon the enlargement of those limits. If, on a careful consideration, this should be found to be the truth, I presume the Government would not consent so to enlarge the basis of the reference: and it is certainly for them to consider *when* and *how* they should take the necessary steps to assert their position in this respect. I conceive our own[1] immediate course is to prepare a proper Reply; but this Reply should deal with the point, in one way or another.

A long diplomatic correspondence followed, in the hope of finding some way out of the difficulty. To this I contributed a memorandum on the construction of the treaty, dated the 7th of February 1872; in which I demonstrated historically, from the series of despatches which had passed on both sides, that the

[1] That of Mr. Bernard, Lord Tenterden, and myself.

words in which the subject-matter of the reference to arbitration was defined had a "known" sense, comprehending only the claims for direct losses resulting from the captures made by the *Alabama* and other cruisers.

BRUTON STREET, 12*th March* 1872.

MY DEAR LADY LAURA—I have been vexed at thinking that Sir Roundell was somewhat angry with me yesterday.

I fancy he thought I was engaged in the Quixotic attempt of cajoling him into agreeing to some solution of the *Alabama* question, with which he did not agree.

I acknowledge having abused his remarkable kindness to me in this matter, by perpetually troubling him with small as well as big questions, but further I plead "not guilty."

For the sake of the country, of the Government, and I must add of myself, I am anxious that the Treaty should not miscarry.

The Americans are at least as anxious as we are on the subject, but I doubt their consenting to an overt withdrawal of that which they have put forward.

I wish, therefore, that every possible solution should be carefully sifted, and I have bombarded Sir Roundell with everything that had any element of plausibility in it, relying on his firmness, tact, and experience, as to the substance, and on his precision of language, in which I am wanting, for the form.

Pray tell me whether I should be more reticent for the future.—Very sincerely yours, GRANVILLE.

When, on the 15th of April, the "Counter-cases" of the two Governments were presented at Geneva, ours contained a protest against those claims, as beyond the scope of the reference; and it was delivered under a reservation of all our rights in the event of the difference between the two Governments

continuing; of the existence of which, as well as of the negotiations then in progress, the Arbitrators were informed, in a note at the same time addressed to them by Lord Tenterden.

So matters stood, the two Governments at cross purposes as to the subject-matter of the arbitration, until the time when the Arbitrators were to meet for business at Geneva drew near. There seemed, under such circumstances, to be no use in their meeting, and still less in the attendance of Counsel.

The 12th of June was the day on which those who were to attend at Geneva would have to leave England; and, late on the evening of the 11th, I was summoned to meet Gladstone and the other Ministers at the Foreign Office, and discuss the situation. The discussion continued till after midnight and when I went home, nothing had been settled, except that I was to accompany Sir Alexander Cockburn and the rest of the English party to Geneva the next day, and our instructions were to be sent after us to Paris. The instructions, when they came, were, that an adjournment was to be asked for, until the preliminary question could be settled between the two countries.

We reached Geneva on the morning of Friday the 14th June, the day before that fixed for the meeting of the Arbitrators. As we passed through the north of France, I remembered M. Champeaux's letters; but I saw no signs of damage from the recent war. Paris, also, seemed itself again; only in the Place Vendôme, where we were lodged, there

was nothing more than a short stump of the great column left; and the Tuileries, the Hôtel de Ville, and some other public buildings, were standing in a state of ruin, with frequent placards of "Liberty, Equality, and Fraternity," flaunting over their shattered walls.

When the Arbitrators met, after Mr. Bancroft Davis had delivered the printed Summary of the Argument on the American side, Lord Tenterden, stating that ours also was ready and in his hands (but could not then be put in), explained that the difference between the two countries as to the scope of the arbitration, which had been mentioned in his note of the 15th April, still continued; but that the British Government did not abandon the hope that it might be removed by further negotiation, if time for that purpose were given. He therefore asked for an adjournment of the Tribunal for eight months, to enable a Supplementary Convention to be concluded and ratified by the Senate of the United States,[1] if the two Governments could come to an agreement. Two short adjournments (the last to the 19th June) followed, to gain time for Mr. Bancroft Davis to receive instructions from Washington on Lord Tenterden's proposal.

During the pause afforded by these adjournments, Sir Alexander Cockburn told me, that the idea of getting rid of the difficulty by a spontaneous declaration of the Arbitrators against the indirect claims had

[1] The Senate would not be in session until towards the end of that time.

been suggested by Mr. Adams, and that the rest of the Arbitrators were inclined to entertain it: and he desired me to consider, in what form it could be done, so as to leave the position assumed by our own Government untouched, without shutting the door against its acceptance on the other side. Accordingly I drew up a form of declaration, which I thought might be accepted on both sides, unless the United States preferred the failure of the Treaty to the abandonment of those claims; and this, being communicated by Sir Alexander Cockburn to the other Arbitrators, was adopted by them. The result was, that at their meeting on the 19th of June, Count Sclopis, the President, professing to speak solely with reference to the British application for time (as to which Mr. Bancroft Davis was still without instructions), said, that the Arbitrators did not propose to express or imply an opinion upon the point in difference between the two Governments as to the interpretation or effect of the Treaty: but that, in view of the object for which so long an adjournment had been asked for, they thought it right to state that, "after the most careful perusal of all that had been urged on the part of the Government of the United States in respect of the indirect claims" (of which they enumerated the several heads), "they had arrived, individually and collectively, at the conclusion, that those claims did not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations; and

should, upon such principles, be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide them." That declaration was to be, for the present, confidential: and, to enable the Government of the United States to consider the new position so created, the Tribunal adjourned for a week.

The expectation with which I had left England of returning almost immediately was thus disappointed; but I had the satisfaction (as I wrote to my wife from Geneva on the 18th of June) of believing that my being there might have been of some use; and I added, that the course which things had taken, unexpected though it was, justified entirely the wisdom of the resolutions arrived at by our Government, and on which we were instructed to act.

The weather was sultry; and an interval of recreation, just then, was welcome, and I went with the Foreign Office party to Chamounix, where, after two days, the Chief-Justice joined us. It was the first burst of summer; waterfalls tumbling in unusual volume from the tops of the precipices on each side of the valley of the Arve, and the whole intervening space carpeted with bright flowers, rose-coloured, blue, and white, mixed in about equal proportions,[1] with a slight undergrowth of green here and there visible. Our party made the common excursions to Mont-

[1] The plants which produced this effect were chiefly the saintfoin (*Onobrychis sativa*), the meadow sage or clary (*Salvia pratensis*), and the ox-eye daisy (*Chrysanthemum Leucanthemum*).

anvert, across the Mer de Glace to the Chapeau, and up the Flegère, in brilliant weather, and in very high spirits. I had done all this, except crossing the Mer de Glace, in 1857, but later in the year: now I saw it more perfectly, and in greater beauty; the alpine rhododendron, and the large-flowered blue gentian, being in full blossom. I wrote to my wife:—

The view from the Chapeau, looking up the glacier, was most sublime; the Aiguilles du Géant and of the Grande Jorasse closing the view at the other end with their great tooth-like ice-clad crags, and immense snow-covered precipices between them, on which the sun shone full; the valley of ice between beautifully coloured, white, brown, green, and blue; the huge broken piles of *seracs*, formed by the glacier as it tumbles over the steeper incline downwards into the valley, rent with awful fissures, lying at our feet; and the nearer Aiguilles of Charmoz over Montanvert and Argentière to our left, "half concealed and half revealed" by the wreaths of cloud drifting over their summits.

From the Flegère, the whole range of Mont Blanc was spread out before us under a clear blue sky.

From these scenes we were summoned back to Geneva a day sooner than we expected. I found there a letter from Lord Granville, dated the 22nd June, in which he said:—

You will admit we had some reason for asking you to go to Geneva; and you must be glad, notwithstanding the great personal inconvenience to yourself, that you have not lost the opportunity of taking so important a part in the settlement of this vexed question, in a manner which is so satisfactory in every respect. Our obligation, however, to you remains the same. I should be much obliged if you would tell the Chief-Justice that he appears to have acted with great judgment. It was not easy carefully to abstain from taking any preliminary part, and yet

not to discourage Adams and the neutrals from doing their work. I presume it is almost certain that the American Government will sufficiently acquiesce in the declaration of the Tribunal to enable us to proceed. They will probably hold the language, that "they have succeeded in getting everything they want,—they never expected to get money; but they desired an opinion from a majority of the arbitrators against the principle of claims which, admissible under the Treaty, it was nevertheless of the last importance to them should for the future be extinguished,—the unanimous decision of the arbitrators, even without hearing what could be said on the other side, was most satisfactory." I am sanguine in my belief, that the public will recognise, as much as the Cabinet, the remarkable skill with which the declaration of the Tribunal was drawn. I think you were right in taking into consideration the feelings of the American Government as to any appearance of dictation to them. . . . The secret has been well kept here and at Geneva; but is oozing out in the States.

When the Tribunal reassembled, Mr. Bancroft Davis announced the acceptance of its declaration against the indirect claims by his Government, and that, consequently, they would not be further insisted on, and might be excluded from consideration. Lord Tenterden also, on the 27th of June, said that this (formally embodied in an Act of the Tribunal) would be satisfactory to the British Government; and, on that understanding, he withdrew his application for any long adjournment, and put in the printed Summary of the British Argument. The President then, on the part of the Tribunal, declared that the indirect claims were, and from thenceforth would be, wholly excluded from consideration; and proceeded to deliver a speech in a magniloquent vein, which he deemed suitable to the occasion.

There were certain points on which I thought

further argument necessary, and asked leave to offer it: but Mr. Adams objected; and the Tribunal held, that it was not for the counsel or agent of either Government to make such a request, but for the Tribunal to take the initiative, when it thought that further argument might be useful. On the next day they declined then to entertain a motion made by Sir Alexander Cockburn, that I should be heard on the most important of those points; and they adjourned till the 15th of July.

Two days afterwards, I had the happiness of being at home again, and was warmly welcomed by my friends. Both in an official despatch to Lord Tenterden, and in a private letter to myself, my services were graciously acknowledged.

To Sir Roundell Palmer, M.P.

Foreign Office, 10*th July* 1872.

I have already, though imperfectly, expressed to you my gratitude for all you have done in the question of the Washington Treaty, but my colleagues are desirous that I should associate them in the thanks, for the time, care, and admirable judgment with which you have assisted them up to the present moment.—Yours ever, G.

CHAPTER XII

GENEVA—OUR COMPANIONS—THE ARBITRATORS—
THE FINAL AWARD

1872

I WAS at Geneva again on the 15th of July—no longer alone. My wife and two of our daughters, Laura and Sophia, accompanied me; and on the 1st of August my son joined us for his summer holidays. Our other daughters spent the time of our absence from England with friends; Mary in Scotland, at Leslie, and with Mr. and Mrs. Graham[1] at Urrard in Killiecrankie; Wilfreda in the North of Ireland, at Glenarm Castle, with the Dowager Lady Antrim.[2]

I could not recommend Geneva to any one for summer quarters. My wife wrote, truly, that it was "the noisiest town she ever was in." The idle part of the population (which was not small) used to

[1] Mr. Graham was then M.P. for Glasgow; they occupied the house at Urrard (near the place where Claverhouse was killed in the famous battle) for several years, including that in which we were at Pitlochrie.

[2] Lady Antrim was daughter of the second wife of Mr. William Whitbread, of Southill in Bedfordshire, my wife's uncle.

congregate on most evenings upon the quays and the bridge over the Rhone, near our hotel, and remain there, especially on Sundays and when there was any political demonstration, shouting and singing with all sorts of accompaniments, till long after we had gone to bed. The days were hot, and the nights generally warm and bright; I doubt whether there was any hour, from sunset to sunrise, when the place was quiet. I called it, in a *jeu d'esprit* about the arbitration which I wrote there, "the city of noises, where freedom rejoices all through the long summer to drive away sleep." We might have escaped from these annoyances, if we had gone, as some friends in England advised us, to Monnetier on the Salêve; or had taken, as some of the arbitrators and the principal persons among the Americans did, one of the numerous villas on the lake-side. But this would have been inconvenient for the work we had to do, in which I had occasion to communicate frequently with Lord Tenterden and Mr. Bernard, and with the gentlemen from the Foreign Office whose assistance was at my command. The whole British party was, therefore, lodged together in the Hôtel des Bergues, on the right bank of the Rhone, just where it issues from the lake, close to the bridge—a spacious square building, of which we filled the first floor on three sides, my own suite of apartments being at the eastern end, those of the Chief-Justice and our other companions at the western, and our general sitting, dining, and secretaries' rooms between them.

From our windows we looked across the lake,

straight to Mont Blanc; its central dome of snow, and the spires of its *aiguilles*, rose behind the nearer peak of Mont Mole, lighted up with crimson and gold, or bathed in fire, under the early sunrise when the weather was clear. A few minutes' walk took me every morning to the floating bath on the Rhone, a plunge in which was always a healthful preparation for the day's work.

The presence of my wife and daughters there contributed much to my own happiness, and they made everything bright and cheerful, decorating the sitting-rooms with choice wildflowers, and throwing light into our daily society, which without them might have been dull. They did more than this, and were as useful in what was really public service as if they had been there at the public charge; which of course they were not. They were assiduous in their attention to the wives and daughters of the Arbitrators and of the members of the American party; so promoting very much that spirit of friendliness and cordiality which our Government had at heart. There was nobody else to do this; and the return of hospitalities also fell to our lot. It was thought desirable that a dinner should be given to the Arbitrators and their wives, and all the members of the American party and a few other friends, Swiss and English, which we undertook to do; the Chief-Justice being one of our guests, though he was not inclined to add the labours of social entertainments to those of the Tribunal, not being in good humour with the proceedings, or with the actors in them except

the British party. The entertainment came off on the 5th of August, although I was crippled with gout at the time, and it was very successful. My wife's desire to be on the most agreeable terms possible with those into whose society she was thus thrown was appreciated on their part; and nothing could be more amicable than our private intercourse with them all.

We also found other pleasant society in and near Geneva. Mr. Marcet, son of the well-known authoress, and his sister Mrs. Edward Romilly, at Malagny; M. and Madame Pasteur at Grand Sacconex; and their relative Mr. Alfred Wills,[1] of "The Eagle's Nest," at Sixt; M. Naville; M. Merle d'Aubigné, the historian of the Reformation, and his English wife; M. Forget, partner of Mr. George Melly, member for Stoke-upon-Trent, one of my parliamentary friends; Sir Robert and Lady Emily Peel, whose villa was upon the lake, very near Geneva; and Sir James Paget, the surgeon of highest reputation in England, and his family, who occupied a house[2] which had belonged to one of the Bonaparte princes between Geneva and Lausanne. While we were there, Mr.

[1] Now Sir Alfred Wills, Judge of the Supreme Court in England. Madame Pasteur was Mr. Marcet's daughter.

[2] "*Prangins.*" It belonged to Prince Napoleon, the husband of Princess Clothilde. He had lately sold it for £20,000 (in aid, as was understood, of his cousin the ex-Emperor's expenses) to Mr. Lucas, an English builder; by whom it was lent for eight weeks to Sir James Paget. We were told (a story honourable to both parties) that Mr. Lucas, after paying the £20,000, found out that the place was worth a great deal more, and offered to give up his bargain, and let the Prince have the benefit of a sale to the highest bidder: but that the Prince declined that offer, the price having been fixed by his own agents.

(now Sir Herbert) Oakeley, Professor of Music at Edinburgh, and a great friend of my sister-in-law Lady Rothes, was brought into Geneva suffering from a dreadful accident which had happened to him near St. Nicholas: we visited him frequently, and were the means of bringing Sir James Paget to see him.

During one of the pauses in the sittings of the Tribunal, from the 26th to the 29th of August, I went with Lord Tenterden and my daughters to the upper end of the lake, and later, when recovering from the gout, I went with my wife and some others of our party to Monnetier, enjoying much its pure air and the fine views which it commands of the Mont Blanc range on one side, and of Geneva and the lake, and the Jura beyond them, on the other. Just at the very end of the Arbitration, some of our party went for two or three days to "The Eagle's Nest," built by Mr. Wills at the top of a crag in the valley of Sixt; and others, with my wife and myself (I was still unequal to walking) to Chamounix.

Of the American party, we had known Mr. and Mrs. Adams, and some of the younger members of their family who were with them, intimately in England. Mr. Adams was a shrewd, sagacious man, with perfect command of a temper naturally warm; not loquacious; keeping his own counsel; too honourable to go lengths repugnant to his sense of fair dealing, even for his country; but too much identified, from the first, with the diplomatic presentation and advocacy of its claims, to make it possible that he could examine them with a dispassionate mind.

The part which he took in getting rid of the indirect claims was not less politic than honourable. I have no doubt that it gained him influence with the three independent Arbitrators, which his address and coolness afterwards increased. He was not, like Sir Alexander Cockburn, at home in the French language. But Lord Granville, who supposed that this would give the Chief-Justice an advantage over him, was mistaken. While Sir Alexander was pouring eloquent French into the ears of his colleagues, Mr. Adams was studying the temper of their minds. The reserved and self-controlled man, who watched and husbanded his opportunities, was in this business more than a match for the brilliant excitable man, conscious of intellectual superiority, and at no pains to conceal what he felt. It is probable that, from the moment when the indirect claims were disposed of, there was a predisposition on the part of the independent Arbitrators to make compensation in some way to the Americans for that failure: and, if that was so, Mr. Adams understood how to take advantage of it.

Mr. Bancroft Davis, the American "Agent," was not so popular with us as his wife, who was a general favourite. He was a diplomatist, and had been (or was afterwards) their Minister at Berlin.

Mr. Evarts, his principal colleague, was a man of quite a different stamp—"keen, but high-minded," I called him in the *jeu d'esprit* already mentioned. In person spare, in countenance refined and intellectual, in conversation sincere and candid, with a

good deal of dry humour, he stood very high in the estimation of us all, and not least in my own. I could have trusted him implicitly in anything in which I had to deal with him alone. He was a good lawyer and a skilful advocate, and had also the qualities of a statesman; his manners were simple, and in his domestic relations he was very happy. Altogether, he was a man of whom any country might be proud. His name was appended to the "Case" and other documents, of which we so much disliked the tone; but it did not stand alone; it was preceded by that of Mr. Cushing, and followed by that of Mr. Waite, afterwards Chief-Justice of the Supreme Court of the United States. Mr. Waite was a commonplace honest man, with nothing remarkable about him; the elevation which awaited him was not then dreamt of by anybody. He was not the draughtsman of these documents; they were prepared, as we understood, by a younger hand, that of Mr. Charles Beaman, who was also at Geneva, and who, a few years later, married Mr. Evarts' daughter.

Our own party, when we went out, consisted (besides the Chief-Justice) of Lord Tenterden; Mr. Bernard; Mr. (now Sir Thomas) Sanderson, then a clerk of high standing in the Foreign Office;[1] Mr. Eugene Lee Hamilton, and Mr. Fitzroy Langley (also clerks in that office), who were specially attached as translator and secretary to myself; and Mr. Markheim, a Fellow of Queen's College, Oxford, who with Mr. Sanderson performed similar duties for the

[1] Now (1897) permanent Under-Secretary.

Chief-Justice. It was afterwards reinforced by another promising young man from the Foreign Office, Mr. Frank Villiers,[1] son of Lord Granville's predecessor; and by Mr. Arthur Cohen,[2] a member of the English Bar, who came out, with tables prepared in the offices of the Admiralty and the Board of Trade, to help us in the dissection of the details of the American claims, which were in many respects grossly overcharged.

Of the character of Sir Alexander Cockburn, I shall find a more suitable place to speak. He was very kind to us all, and treated me with confidence. He allowed his discontent at the manner in which the other Arbitrators, overruling his opinion, conducted their proceedings, to appear too plainly, and, by so doing, may have thrown more power than was desirable into Mr. Adams's hands. He was justly indignant at, and warmly repelled, the aspersions cast upon our national honour. When thanked by Lord Granville for "the energy which, while discharging with impartiality the duties of an arbitrator, he showed in maintaining the cause of this country against the allegations and the claims preferred by the United States, whenever those allegations appeared to him to be unfounded, and those claims unreasonable and exorbitant," he answered:—

> When I undertook the office of arbitrator, I believed that the only question would be, whether Her Majesty's Government

[1] Now assistant Under-Secretary.

[2] Now Queen's Counsel, and for several years M.P. for Southwark. When Chancellor, I offered him a Puisne Judgeship, which he declined.

had by any oversight or omission during the American Civil War failed to fulfil the obligations admitted by the Treaty of Washington to have been binding on it. When I found that, with a view to a favourable decision on this question, charges involving the honour and good faith of the Queen's Government and the country were put forward in the pleadings of the United States, and saw plainly that those charges were unfounded and unjust, I thought it my duty not to pass them over in silence.

The elaborate opinion which he delivered at the close of the proceedings was regarded by some persons in England[1] as too outspoken for the occasion. But on such occasions the view is narrow, which looks only to the convenience of the moment; something is due to the truth of history; and the Chief-Justice of England had only too good cause for saying what he did in vindication of his country.

Charles Stuart Abbott, third Lord Tenterden, grandson of one of Sir Alexander Cockburn's most learned predecessors, served a long apprenticeship in the Foreign Office before his succession to the peerage, and had a well-established reputation for ability, and knowledge of international questions. He was my colleague on more than one Royal Commission relating to such questions; I knew him well, and esteemed him. He was not a man of patrician aspect, nor had he any graces of manner; but he was not the less a true gentleman; he knew his business thoroughly, and it would have been

[1] Lowe was one of them: he wrote to me, censuring it in very strong terms on the 5th October 1872; and saying he was sorry I did not agree with him, "especially as he believed I was in a great majority."

impossible for any one to have performed with more tact, temper, and discretion the duty (by no means an easy one) with which he was charged at Geneva. With all this, he found time for never-failing good offices to myself, and my wife, and children. He died prematurely in 1882.

Mountague Bernard [1] had been my pupil in early days, and was from that time one of my best friends. His attainments in general and international jurisprudence were great, and led to his being appointed a member of the Commission which negotiated the Treaty of Washington, where his duty was a very responsible one, as he was the only Commissioner on the English side qualified by that kind of knowledge. Whatever praise either the matter or the manner of the British "Case," "Counter-case," and "Summary of Argument," may have deserved, was mainly due to him; and in my own work at Geneva, which was sometimes hard, I received from him constant assistance.

Mountague Bernard (who never married) was a student all his life, dividing his later years, unless employed on any public duty, between Oxford and a house called Over-Ross, near Ross in Herefordshire, where some of his family lived. In the beautiful churchyard of Ross, overlooking the Wye, his remains rest. He was a man of singular gentleness, with a wide range of intellectual interests; never putting himself forward, but always ready for any duty which he could perform. He was associated

[1] See Part I. of my *Memorials*, vol. i. pp. 340, 369.

with Lord Blachford, Thomas Henry Haddan, and Dean Church, in the foundation of the *Guardian* newspaper; and, with them, was a frequent contributor to it, and helped to maintain in it a higher, more temperate, and more religious tone than has usually been found in the organs of ecclesiastical parties. He was also an able and clear political and juridical writer, and exercised over many minds, without seeking it, a wholesome influence. Always delicate in health, he did more work than his strength was equal to; and it is probable that the labours of the Oxford Commission, of which he became chairman in 1880 after I left it, hastened his end.

Mr. Sanderson made all our arrangements for us, and was one of the most useful and popular members of our party—he was (as I said in the *jeu d'esprit* more than once mentioned) "our Treasurer, our Prompter, our *sine quâ non*." The younger men were all as agreeable and as industrious as could be desired. The two who were specially told off for my service were Mr. Lee Hamilton and Mr. Fitzroy Langley. Mr. Langley (since dead) was of Irish birth, sprightly and intelligent, and never sparing himself trouble. Mr. Hamilton was a man of a bright delicate spirit, and a very accomplished linguist. He passed soon afterwards into the diplomatic service, in which he had every prospect of rising; but his health gave way, and he was obliged to leave it, and afterwards took to poetry.

I must now speak of the three Arbitrators,

nominated by the King of Italy, the Swiss Republic, and the Emperor of Brazil.

Count Sclopis, the Italian, who on the 15th December 1881 was chosen President of the Tribunal, did not give us the impression of a strong man. He was in person above the average height, portly and rhetorical; well-bred, but too demonstrative in his courtesies.

M. Staempfli, the Swiss (who had been President of the Confederation) was an abler, and a different sort of man; short in stature, square and muscular; rough and homely in manners; with a dark gloomy countenance, on which resolution and force of will were plainly written.

Baron (or Viscount, as he became while the Arbitration was in progress) d'Itajubà was Brazilian Minister at Paris; a small man of good figure, cheerful looks, and agreeable conversation;—not learned, but altogether a gentleman.

Of the three, Count Sclopis had, in his own country, some reputation as a jurist. If the other two had ever studied law, it was (I suspect) but slightly, and perhaps only for the purpose of this arbitration.

I had said, in my speech on the Treaty of Washington, on the 4th of August 1871, that we were bound to assume that the Arbitrators to be nominated under the treaty would be trustworthy, honourable, and capable. "But" (I added) "of all such high arbitrators this must be said, that they cannot enter without a certain degree of bias upon

the consideration of great public questions. We and the United States are the two great maritime Powers of the world; we cannot possibly find as arbitrators any Powers like ourselves. In one respect, that may tend to impartiality of decision; but in other respects there may be a risk of encountering a current of opinion different from that which has prevailed between the two countries parties to the arbitration, and possibly there may be an unconscious bias of political interest, arising from the point of view from which the Powers called in to arbitrate may naturally regard similar questions." What is true of Sovereigns, or of Ministers advising them, may be equally true of diplomatists or jurists nominated by Sovereigns or Rulers of States. In the present case, there might be reason to apprehend, as to two at least of the Arbitrators, that, if any such unconscious bias existed, its bearing would not be favourable to Great Britain. A Brazilian arbitrator might be excused, if he thought that on more than one occasion we had asserted against his country, in a peremptory way, very high doctrines of international obligation; and that we ought not to complain, if like measure were now dealt out to us. And the proximity of his country to the United States might make the goodwill of those States a matter of greater importance to it than ours. A Swiss, the citizen of a country without a seaboard, could never be neutral in a maritime war, and might lay down the most extreme doctrines as to the obligations of maritime neutrality without hazard, under any circumstances,

to his own nation: and might, not unnaturally, have that sympathy with the great Federal Republic of the West, which would be likely to arise from his attachment to similar political institutions. Upon the Italian arbitrator, those influences might not operate: but some modern jurists,[1] who had gone beyond others in the length to which they carried the obligations of neutrality, were Italian: and a living Italian jurist, Pierantoni, had published an opinion upon the questions to be determined,[2] favourable to the United States, not in other respects only, but even as to the indirect claims.

What, in these respects, was probable *a priori*, did to some extent happen. Viscount d'Itajubà, the fairest man of the three, entered upon the arbitration as if there were no serious question, except as to the amount which Great Britain ought to pay; and this (if I may judge from a conversation which I had with him in his own house) he thought we need not much care about,—"*Vous êtes riches, très riches*," he said. He went with Mr. Adams at the outset, till, by adding the claims in respect of the *Florida* to those in respect of the *Alabama*, a substantial amount of damages had been arrived at;

[1] Particularly the Abbé Galiani: of whose authority the great American jurist, Wheaton, spoke almost contemptuously.

[2] He was not the only continental jurist who did so. Professor Bluntschli, and M. Rolin Jacquemyns, in certain periodical publications, also (in Sir Alexander Cockburn's words) "undertook to pronounce a judgment on the subject matter of this dispute, as it were *ex cathedrâ*": whether spontaneously or under any particular influence, I do not know. They did not, however, go the length of supporting the indirect claims.

and there he stopped. As to the effect of coaling in British ports, and as to the absence of any sufficient ground for holding this country responsible for any of the acts of the *Shenandoah*, he agreed with Sir Alexander Cockburn. If his opinion on those points had prevailed, we should have had to pay less by one-fourth than we did. In holding that all ships of the class to which the *Alabama* and the *Florida* belonged ought to have been excluded from British ports, he was probably influenced by a regulation of the Brazilian Empire to that effect, to which he referred in one of his speeches. He observed, much more than the other arbitrators, the prudent rule, that a judge who is not a lawyer should give as few reasons as possible for his opinions.

M. Staempfli went invariably with Mr. Adams, when Mr. Adams (as was naturally the case, whenever it was not too plainly unreasonable) went against Great Britain,—even in the case of a ship called *Retribution*, and of the claims for the expenses incurred by the United States in the pursuit and capture of the inculpated vessels, in which no one else did so. And on some points he went further than Mr. Adams himself. He would have held this country responsible (if the other Arbitrators had not differed from him) for *all* the acts of the *Shenandoah*, and not merely those subsequent to her obtaining coals and men at Melbourne; and also for the value of the *Sumter* and her armament, on the ground that she had remained a long time at Gibraltar, and had been there disarmed and sold; though the *Sumter* was a purely American

vessel, neither built, nor equipped, nor armed, nor augmented in force, within British jurisdiction. And he proposed, after every material question had been thoroughly threshed out, that we should be condemned to pay 20,000,000 dollars—four millions and a half more than was, in fact, awarded. He approached every question with a strong *animus* in favour of the American view.

Lord Westbury, in his letter of the 7th January 1872 to Lord Granville, had truly observed, that a tribunal so constituted was "little likely to observe the well-known rules of arbitrations or course of judicial proceedings." They might, under the terms of the treaty, have refused to allow any questions to be argued before them; or they might have allowed arguments, reserving the consideration of the questions as to which this was done until after the arguments had been heard. The course which they actually took was, to consider and state their opinions upon the questions first (with closed doors, and in the absence of counsel) and to hear arguments afterwards. In vain did Sir Alexander Cockburn, on the 17th of July, submit to them, "that the rational, logical, and most convenient course would be, first to consider and determine what were the principles of law applicable to the subject, and by which the decision of the Tribunal must ultimately be determined," with reference, especially, to the effect to be given to the term, "due diligence";—to the bearing on that question of the general principles of international law;—and to the question "whether a Government

acting in good faith, and honestly intending to fulfil the obligations of neutrality, was to be held liable by reason of mistake, error in judgment, accidental delay, or even negligence on the part of a subordinate officer." These, he said, were difficult questions, as to which there had been a conflict of opinion among distinguished jurists:—"they ought, therefore, to call for the assistance of the counsel who were in attendance on the tribunal, to assist them with their reasoning and learning, so that arguments scattered over a mass of documents might be presented in a concentrated and appreciable form, and the tribunal might thus have the advantage of all the light which could be thrown upon so intricate and difficult a matter, and that its proceedings might appear to the world to have been characterised by the patience, the deliberation, and anxious desire for information on all the points involved in its decision, without which it was impossible that justice could be duly or satisfactorily done." The other Arbitrators determined to follow a proposition of M. Staempfli, that they should at once proceed to consider, one after another, the cases of the several ships inculpated; and at the three next sittings they took up the cases of the *Florida* and the *Alabama*, going into all the questions of fact and principle which they regarded as applicable to them; on all which they pronounced (with closed doors) positive opinions, holding Great Britain liable under the first and second rules of the treaty for all the captures made by both those ships and their tenders. This having been done, and the opinions so

given recorded in their proceedings (though unknown to counsel[1]) they on the last of those three days determined to hear arguments upon the question of due diligence, and on two other leading questions of principle, all which they had prejudged : and a month afterwards they also agreed to hear a further argument as to the entrance of the *Florida* into Mobile, a Confederate port, before she either received a commission as a ship of war, or began to cruise,—which question (acknowledged by Mr. Adams to be difficult) they had also prejudged. The course taken as to the *Shenandoah* was the same: except that Count Sclopis, on whose vote the decision depended, after Mr. Adams and M. Staempfli on one side, and Viscount d'Itajubà on the other, had given (all with closed doors, as before) decided opinions, expressed a wish for some further elucidation on one question of fact;—saying at the same time enough to show that he had arrived at a foregone conclusion; as appeared clearly, from what he added after the argument. The arguments on all these questions it was my lot carefully to prepare ; one of them, that as to the *Shenandoah*, on very short notice, while I was suffering from gout. To my colleagues they gave satisfaction ; and, on the other side, they were elaborately answered. But, after what had passed in the previous consultations of the tribunal, it was all lost labour ; not Cicero or Demosthenes, Vattel or Wheaton, could under such circumstances have produced any effect. It is true that, upon all the cases, the final and formal vote was

[1] After the final award they were made public.

not taken till afterwards; but the whole thing had practically been settled before. From the decisions in all these cases (except the *Alabama*) as well as from the course of proceeding, Sir Alexander Cockburn dissented.

To Sarah Wilfreda Palmer

Hotel des Bergues, Geneva,
21*st July* 1872.

You cannot think how hard I have been worked, ever since I came here on Monday. The arbitrators seem to want to hurry things on, as much as they possibly can: and, although they do not at present appear to be willing either to let me open my lips, or to allow me to present any written argument for their consideration, it has still been thought necessary that I should get a written argument ready; and this has occupied every spare moment of my time since I came here: and even to-day (Sunday) I shall not have it all to myself, and to rest, as I could wish: because this paper of mine *must* be finished, in time to be read (if they will let it be read at all!) before one o'clock to-morrow.

In the first four days, Mt. Blanc did not show himself; but on Friday, and yesterday, we had beautiful morning and evening views of him, from the windows of this Hotel: and Lolly got up at *four o'clock* on Friday morning!!! to sketch the view. . . .
—Ever your fond Father, R. P.

Everybody knows, that by the award Great Britain was condemned to pay the United States a round sum of 15,500,000 dollars, equal to more than £3,000,000 sterling; which, when the Government of the United States had received and came to distribute it, was found to be so much in excess of all the claims

which could be substantiated, with interest on them all, as to leave a large balance, which was applied by Act of Congress to purposes which the Arbitrators never contemplated. Most people also know, that the only ships, in respect of which the decision was adverse to Great Britain, were the *Florida*, the *Alabama* (and their tenders), and the *Shenandoah*, —the latter ship not originally, nor under the first Rule, but under the second Rule, by reason of the augmentation of her force at Melbourne. But I doubt whether many persons are aware of the grounds, negative and positive, on which the majority of the Arbitrators proceeded; and yet it is important, both to those who may desire to understand the working from a judicial point of view of an international arbitration so conducted, and to such as may be disposed to treat this award as a precedent to be hereafter followed by the nations parties to the Treaty of Washington, and any others who may adopt the three Rules, that these grounds should be known. I have myself endeavoured to understand, and will, as far as I can, explain them.

The decision of every question turned entirely upon the three Rules: upon which the majority of the Arbitrators placed a construction alternately rigid and elastic, always as might be most severe against a neutral. Count Sclopis did, indeed, in one of his speeches,[1] acknowledge that "the requirements of a belligerent towards a neutral ought not to be pushed to such a point as to embarrass the neutral in the

[1] As to "due diligence."

normal exercise of his rights, or in the organisation of his administrative functions";—that "the neutral might be asked to put into full activity the powers of action of his Government, in order to maintain his neutrality; but he could not reasonably be expected to modify the organisation of his administrative machine to serve the interests of another Power"; and that the Tribunal ought to "beware of making the conditions of neutrals too difficult, and almost impossible." These were sound principles, for which we had throughout contended; and we expected that we should have had the benefit of them in the interpretation and application of the cardinal phrases of the first Rule of the treaty, "due diligence," and "reasonable ground to believe." We thought that, for the same purpose, the political institutions, laws, and "administrative functions," of the Governments of the two nations (including their respective Foreign Enlistment Acts), and their historical and judicial precedents relative to the obligations of neutrality, were proper to be considered; and we were entitled, under the letter as well as the spirit of the treaty, to have the "principles of international law, not inconsistent with the Rules," applied for the determination of questions which the terms of the Rules themselves did not conclude.

In these expectations we were disappointed. M. Staempfli, in his "programme" submitted to the Tribunal at its first meeting in July, proposed to exclude from consideration (among other things) "the historical precedents of the violation or unequal

execution of neutrality law, and of judicial decrees, in so far as these did not furnish the means of deducing principles of the law of nations *not open to controversy.*" They were accordingly excluded; as were also the Foreign Enlistment Acts and all other laws of both nations: no reference was made to them by any Arbitrators except Sir Alexander Cockburn. It was the same as to international law, as distinguished from the conventional law established by the Rules themselves between the two nations. The doctrines, usages, and authorities of international law, so far as they bore upon the points in controversy, were either passed over in silence, or mentioned only to have exceptions made to them by a strained interpretation of the Rules, extending the Rules to cases with which they did not either expressly, or by any necessary or reasonable implication, deal. M. Staempfli[1] laid it down, that "historical antecedent law, or the practice of the law of nations, as well as science and scientific authorities, might be considered as subsidiary law, so far as the principles to be applied were *generally recognised and not liable to controversy*, nor at variance with the three Rules." "If" (he said) "*any* of these conditions fail, it is for the Tribunal to supply what is wanting, by interpreting and applying the three Rules to the best of their power, and conscientiously." Count Sclopis[2] said: "After all, even if precedents could

[1] In his opinion upon the case of the *Florida*.

[2] In his opinion on the effect of commissions,—a subject to which the Rules neither directly nor indirectly refer.

be quoted contrary to the opinion which I maintain, I should reply, that the letter *and spirit* of the three Rules do not allow us to follow the old ruling. It must be borne in mind that it is *a new law, full of equity and foresight*, which we are now to follow."

The grounds on which the question of "due diligence," in the case of the *Florida*, was decided against Great Britain, might alone be enough to deter other nations, free nations especially, from acceding to the Rules. That question arose in a distinct form as to each of three periods of time :— (1) before the original departure of the ship from Liverpool ; (2) when she was at Nassau, where she was seized, tried, and acquitted ; and (3) when she entered British ports after issuing, a duly commissioned ship of war, out of Mobile, a Confederate port.

As to the first period, the majority of the Arbitrators treated the mere fact of Mr. Adams having communicated to Lord Russell the belief of the United States Consul at Liverpool, that this vessel (her structure being that of a ship of war) was intended for the Confederate service, though alleged to have an Italian destination, and the verification of that belief by the event, as enough, not only to require the British Government to do their best to ascertain the truth, but to make it their duty in the meantime to act upon the assumption that the Consul's belief was well founded, without any evidence of it which could be produced in any court. M. Staempfli held, that instead of seeking for evidence in support of the accusation, they

ought to have insisted on its disproof by the accused parties; inverting the burden of proof, in a manner for which there was at that time no warrant in any of the laws, either of England or of the United States. Mr. Adams assumed, as the foundation of his opinion, that the British Government "had in its possession the means of extorting unwilling testimony, through efficient and trustworthy agents";—an assumption for which there was not a particle of ground, either in law or in fact. The British Government had no information or means of information about this matter, except that which they received from the agents of the United States; yet it was imputed to them as a want of due diligence, that they did not "take the initiative," "act spontaneously," and, instead of offering to act upon proper evidence, if brought before them (without which they could not, in the words of the first Rule, "have reasonable ground to believe that the ship was intended to cruise or carry on war against the United States"), obtain for themselves such evidence, though the Consul of the United States could not.

Count Sclopis laid down the doctrine, that "the measure of activity," on the part of a neutral, "should be in the direct ratio of the real danger which the belligerent may run from the act or permission of the neutral, and in the inverse ratio of the direct means which the belligerent may have to avoid those dangers"; that "the neutral himself is bound to take the initiative when the circum-

stances constitute a special danger for the belligerent who has no means of protecting himself from them"; but not so "when the geographical position of a State is sufficient of itself to secure the means of promptly repressing any enterprise prepared on the neutral territory." And he drew the conclusion (assuming the point which was to be established, *i.e.* the want of due diligence) that "the neutral could not in such a case *release himself from* responsibility by requiring of the belligerent[1] to furnish him with evidence sufficient to institute regular proceedings before the Courts." "This" (he added) "would be to reduce the belligerent to the condition of a mere subject of the Government of the country. The law of nations is not contented with these narrow measures of precaution; it calls for assistance on a more ample scale. The claim is not founded merely on the *comitas inter gentes*, but on the real necessity which nations are under for reciprocal aid and protection from one another, in order to the maintenance of their independence and security."

On the second period, that of the proceedings at Nassau, it is not necessary to dwell. Mr. Adams thought that the Vice-Admiralty Judge there, with whom he was very wroth, erred in law and in fact. The other Arbitrators held the acquittal of the *Florida* to be a judgment, binding as between the British Government and the accused vessel and

[1] I have here corrected a slip in the print of Count Sclopis's speech, where the word is not "belligerent" but "neutral."

her owners; but not binding on the United States—a distinction irrelevant to the question of "due diligence," as the British Government at Nassau could neither dictate to the Judge, nor overrule his judgment, nor seize and detain the ship which had been acquitted except for some new offence. It was, indeed, alleged, that she afterwards received some armament at a place[1] sixty miles off, as to which it might be doubtful whether it was or was not British territory. But, even if that place was within British jurisdiction, there was nothing to show that the fact was known to, or could reasonably have been foreseen or expected by the colonial authorities. When the ship left Nassau, which she could not have been prevented from doing, she had received no armament; and her subsequent movements, until the time when she entered the port of Mobile, were not, and could not be, known.

As to the third period, after the *Florida* had been commissioned at Mobile as a public ship of war of the Confederate States, we insisted, that "the rule was perfectly established, that a vessel belonging to any Power, recognised as Sovereign or as belligerent, has in virtue of its position a right to claim a reception, and the privilege of extra-territoriality without regard to its antecedents, in the ports of every neutral Power." Mr Adams,[2] so stating our contention, said: "The authorities quoted to sustain this position, sustain it as an established general rule: I see no

[1] An uninhabited reef or rock, called "Green Cay."

[2] In his opinion upon the effect of commissions.

reason to question it." This being admitted, it seemed to us to follow, that the "diligence," due from a neutral towards a belligerent, could not require him to assert or exercise within his ports, in any case whatever (at all events without previous notice), a species of jurisdiction against a public ship of war of the other belligerent, which, by the general rule of usage and courtesy between civilised nations, he was understood to have renounced. He might, indeed, by previous notice, exclude all or any particular ships of war of either belligerent, from his ports; and it might be a reasonable opinion,[1] that an exclusion of a particular ship on the ground that she had been equipped within his territory, contrary to his neutrality laws, would be justifiable. But no principle or authority of international law gave any countenance to the proposition, that a neutral was *bound*, as between himself and another belligerent whose ships were freely admitted into his ports, to take that course: and to imply such an obligation from the engagement, by the first Rule of the Treaty, to use due diligence "*to prevent the departure from his jurisdiction* of any vessel intended to cruise or carry on war as above," was to add to the Treaty a *fourth* retrospective Rule, as to which it was silent, and not to apply any of the three Rules which were there.

Mr. Adams, on this subject, used more cautious and hesitating language than his colleagues; but he thought[2] that such cases as those of the *Florida* and

[1] See cases of "Florida" and "Alabama," *Memorials*, Part I. vol. ii. pp. 431, 432.

[2] Opinion on the effect of commissions.

Alabama ought to be treated as exceptional. All his opinions before the Tribunal were coloured by rhetoric; and he seems to have judged these cases, as if things which happened afterwards had happened before. He "could see no reason why the existence of a commission should have stood in the way of a clear expression by Great Britain of its sense of the indignities heaped upon Her Majesty's Government by the violation of her laws within her various dominions, *continuously persisted in during the existence of this belligerent.*" He thought "it would have justified the seizure and detention of the offending vessels, wherever found within the jurisdiction." "But" (he added) "if that were considered inconsistent with a clear impartiality, it certainly demanded an entire exclusion from Her Majesty's ports." Viscount d'Itajubà[1] was of the same opinion. "Such a ship," he said, "ought to be seized and detained. The commission with which such a vessel is provided is insufficient to protect her as against the neutral, whose neutrality she has violated. The principle of seizure, of detention, or at any rate of preliminary notice that a vessel, under such circumstances, will not be received in the ports of the neutral, is fair and salutary. . . . The converse is repugnant to the moral sense: for it would be allowing the fraudulent party to derive benefit from his fraud."

M. Staempfli and Count Sclopis founded similar conclusions upon the assumption that commissions given by such a belligerent Power as the Confederate

[1] Opinion on the effect of commissions.

States to ships like these ought not to be regarded in the same light as any other commissions. M. Staempfli [1] said: "A vessel built in contravention of neutrality, which escapes and gets out to sea, . . . may be proceeded against, if she returns within the jurisdiction of the injured State. . . . The fact of her being transferred or commissioned in the meanwhile does not annul the violation committed, unless the transfer or commission was a *bonâ fide* transaction." He did not apparently think it necessary to explain in what sense, or on what ground, the commissioning of the *Florida* by the Confederate States in their own port of Mobile could be regarded as other than "a *bonâ fide* transaction." Count Sclopis permitted himself to adopt, over and over again, the phraseology of the American documents, in which all the ships were spoken of as "privateers": although, as a jurist, he must have known, that a privateer is a vessel belonging to private persons, and cruising for their profit and benefit, under letters of marque granted by a belligerent Power (without which she would be a pirate): and although it was a fact beyond the region of controversy, that both the *Florida* and the *Alabama* were from the first ordered and intended for the public service of the Confederate States, and that their employment to cruise for the benefit of any private persons, under letters of marque or otherwise, was not at any time contemplated. Yet Count Sclopis could say, in his first opinion as to the *Florida*, "I reserve to myself

[1] Opinion on "due diligence."

expressly to treat the question, relative to the effect which may be produced by the *transformation of a privateer* into a vessel of war by a belligerent";— and, in his opinion as to the effect of commissions :—

> Is it possible to admit, that a vessel which has been fraudulently built on the territory of a Sovereign in open contravention of the duties of neutrality which that Sovereign is bound to fulfil, and *with the object of privateering* on behalf of one of the belligerents, can, by the simple act of such belligerent, with a view to escape disasters, *be transferred into a commissioned vessel*, and thus with impunity defy that same sovereignty, against which she had at the outset so gravely offended? No, assuredly: *these changes to the eye, like the shifting of a scene, these transformations* effected with equal audacity and ease, *cannot be taken as serious.* The contravention is not effaced by the operation of *an indecent stratagem.*"

He did not think it necessary, even that previous notice should be given that the privilege of extra-territoriality would be refused to such a vessel. "The provisions of the Rule would be perfectly illusory, if not applied to the case of vessels subsequently commissioned." It made no difference, in his view, that the vessel was received in the ports of all other Powers as a public ship of war of a belligerent State: and he made no distinction between public ships of recognised and sovereign nations, and those of a belligerent Power whose sovereignty was not recognised.

Under the second Rule, it was held (Viscount d'Itajubà, as well as Sir Alexander Cockburn, dissenting) that the supplies of coal obtained by the *Florida* and *Shenandoah* in British colonial ports ought to be regarded as prohibited augmentations of force,

enabling them to use British territories as a "base of operations." The Queen's regulations, on this subject, were the same as to both belligerents; they permitted a sufficient quantity of coal to be taken to carry the ship to the nearest port of her own country, and no more. British ports were used for this purpose by the ships of war of the United States to a much greater extent than by those of the Confederates; the permitted supplies were given without partiality; and, if more coal than the regulations permitted was in any case obtained (which was alleged, not proved), the authorities knew nothing of such excess, and had no information or means of knowledge which might have enabled them to prevent it. But Count Sclopis appears to have thought this immaterial, and that the mention of "due diligence" was purposely omitted from the second Rule, upon the supposition that nothing could be done under it, which would not of necessity be public and notorious. Under the first Rule (he said [1]) "there is occasion for investigation of persons and circumstances, to ascertain the facts denounced. Rule 2 [2] relates to a series of *evident facts*, on which no inquiry need be made as regards credibility." That such a view should have been gravely taken, in face of the questions which arose, not only as to coaling, but as to the recruitment of men by the *Shenandoah* at Melbourne in the dark-

[1] In his opinion on "due diligence."

[2] The words of Rule 2 are:—"Not to *permit or suffer* either belligerent to make use of its ports or waters as a base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men."

ness of the night before her departure, seemed not a little extraordinary. Consistently with it, Count Sclopis held that the use actually made of the supplies of coal obtained, and not any connivance or negligence of the British authorities with a view to naval operations having British territory for their base, was the proper test of the infringement or non-infringement of the Rule. "When I see" (he said) "for example, the *Florida* and the *Shenandoah* choose for their field of action, one the stretch of sea between the Bahama Archipelago and Bermuda, to cruise at her ease, the other Melbourne and Hudson's Bay, for the purpose, effected immediately afterwards, of going to the Arctic Seas, there to attack the whaling vessels, I cannot help considering the shipments of coal in quantities sufficient for these expeditions as infringements of the second Rule." And it must have been on the same principle, that Great Britain was held liable (Viscount d'Itajubà there also dissenting), for the *Shenandoah's* recruitment of men: though the Governor of Victoria did everything which could reasonably have been done to prevent it, and was assured by the captain of that ship, upon his honour, that it had not been, and should not be, done.

The opinion of Sir Alexander Cockburn contains reasons, abundantly sufficient, for his dissent from the majority on the questions of due diligence, the effect of commissions, and the supplies of coal in British ports, and as to the particular cases of the *Florida* and the *Shenandoah*. As to the case of the

Alabama, he held (proceeding upon the first Rule, not upon any notion of an obligation by international law, independently of the treaty), that there was a want of due diligence; not because of the delay in the consideration of the papers on which the Law Officers of the Crown advised the seizure of that ship, which arose from a cause (Sir John Harding's illness) for which the British Government could not reasonably be held responsible; but because the Officers of the Customs, a department of the Government, omitted to take measures for her detention after those papers were in their hands, and during the time which elapsed before the opinion of the Law Officers was obtained.

There were some passages in the speeches of the Swiss and Italian Arbitrators which took their colour from the tone of Mr. Adams, and of the American documents; and a strange as well as copious use was made, by Count Sclopis especially, of the language used on various occasions by Lord Russell, Lord Granville, Mr. Gladstone, Lord Cairns, Lord Hatherley, myself, and others, in which much, which to ourselves seemed the strongest evidence of good faith, and of an honest desire to vindicate our neutrality and enforce the laws made for its preservation, was turned to our prejudice. Nor was it always easy to separate these and other matters of prejudice from the substance of the arguments in aid of which they were introduced.

We were all glad when this great International Arbitration came to an end. Its net result was thus summed up by Sir Alexander Cockburn :—

After all that has been said and written, it is only in respect of two[1] vessels, both equipped at the very outset of the Civil War, and before the contrivances resorted to had become known by experience, that this Tribunal, which has not shown a disposition to take too indulgent a view of the fulfilment of neutral obligations, has been able to find any default in British authorities at home; while, in respect of a third, the Tribunal, by a majority of one voice only, has fixed the Government with liability for an alleged error in judgment of the Governor of a distant Colony in respect of allowance of coal, and for the want of vigilance of the police in not preventing men from joining a Confederate vessel at night. We have here the best practical answer to the sweeping charges so perseveringly brought against the British Government and people.

To the Right Hon. Robert Lowe, M.P.

Blackmoor, *3rd October* 1872.

. . . I cannot say that I quite agree with your views about Sir Alexander Cockburn's Judgment. I do not mean to say that it does not contain some things which are superfluous, and others which are too strongly expressed. But,—possibly from my own old prepossessions, or perhaps because the arbitrators would not allow me to go into the whole argument fairly before them,—I certainly did feel that some authoritative vindication of the real integrity and good faith of this country, and of the soundness of the views of international law on which Lord Palmerston's Government acted was useful, if not needful, after the gross aspersions cast upon us by those whom the United States had entrusted with the management of their case,—

[1] Claims from which we were exonerated, but which it was attempted to support by arguments and evidence, were made in respect of the equipment of the *Georgia*, and of the *Shenandoah* before her visit to Melbourne; and also in respect of the alleged use of British ports as a base of operations by five other ships, the *Sumter*, *Nashville*, *Retribution*, *Tallahassee*, and *Chickamanga*. Other claims, in respect of five more ships (*Sallie*, *Jeff Davis*, *Music*, *Boston*, and *V. H. Joy*), were also made, but given up; being unsupported by any evidence.

meaning, by an Authoritative vindication, such an expression of opinion by a high judicial authority, neither then nor now officially responsible for any act or omission of the British Government, as is substantially contained in Sir Alexander Cockburn's Judgment. I thought so the more, on account of some matters which are contained in Mr. Adams' and some of the other opinions—remembering that, while our Case, Counter case, and Arguments will, in all probability, hereafter be laid aside and forgotten, this Judgment, with the rest of the opinions and proceedings forming the Record of the Acts of the Tribunal at Geneva, will be permanent historical documents.—Believe me, yours very truly, R. PALMER.

BLACKMOOR, *7th October* 1872.

MY DEAR LOWE—One word more about Sir A. Cockburn's Judgment. I cannot but allow that, whatever is in the tone of advocacy or partisanship, or which has a tendency to stir up strife would have been better otherwise. But a judicial expression of opinion upon the whole matter brought into controversy, affecting the conduct of the Government of this country, did not appear to me improper: and I thought it, for some reasons, desirable. The main substance of the Judgment is, I think, of this character: though I agree, that some things might well have been expurgated. You must not suppose that, when I said that I, as Counsel, was not allowed to go into the whole argument, it had ever occurred to me that, if I had done so, it would have been desirable or proper to depart, in word or substance, or in tone, from the line of dignified moderation and forbearance, which were (so wisely and rightly, in my opinion), adopted in the British Counter-case. But what the arbitrators did was, to refuse to allow the whole Case between the two Governments, or any part of it except certain special questions limited and defined by themselves, to be argued before them at all. I had not, therefore, the opportunity (except, on some points, in a sort of strait-waistcoat), of saying in reply to the general views of the American "Argument," what I should have thought proper, and in the way in which I should have wished to do so.—Believe me, yours most truly, R. PALMER.

Geneva (1872)

In the City of noises where Freedom rejoices
All through the long summer to drive away sleep,
There is played a new drama, 'tis called "Alabama,"
Or, "How the world's peace Arbitration shall keep."

Whether feeble or strong, the play's certainly long,
And the actors are numerous, some great and some small;
I will run through them lightly, and sketch very slightly,
Under signs of dumb letters, the features of all.

(*Adams*) A stands for a cool and a long-headed man,
Now Judge of the Claims, which himself first began.
(*Bernard*) B does double duty;—now Solon the Sage;
(*Beaman*) Now Thersites, uncivillest scribe of his age.
C comes in like Cerberus, gentleman three
All at once, very different (as soon you will see):
(*Cockburn*) One presents the great Judge; 'tis impatience of wrong,
Which kindles such scorn from his eloquent tongue;
(*Cushing*) One's the militant lawyer, as sharp as a knife,
Who loves to spice strongly the cauldron of strife;
(*Cohen*) And one's the dissector of monstrous demands,
Still swarming, like hydras, though scotched by his hands.
(*Davis*) D, master of dodges, would jockey old Scratch;
For acuteness of practice you'll ne'er find his match.
(*Evarts*) E, keen but high-minded, would courteous have been,
If his name were not written two others between.
(*Farrol*) F makes up the Protocols, labour tremendous!
(*Groot Courièr*) 'Tis the business of G from all care to defend us.
(*Hamilton*) Our H, for his speech, many nations might own;
But England can't spare him, he's England's alone.
(*Itajuba*) I sits on the Judgment seat; if not profound,
He's a good and true gentleman, honest and sound.

(*Kenney*) K brought the Tribunal to Church in full dress,
His sister's Italian espousals to bless.

(*Fitz Roy Langley*) L works like a racer, still lively and bright;
And, when his work's done, he will dance all the night.

(*Markheim*) M, our Frenchman (not freshman), from Oxford so brave,
Never cries, "hold enough!" tho' his life 'twere to save.

(*Arthur Nicholson*) N showed us his young pleasant face for a day,
Then, finding us very dull, wandered away.
O, you know, stands for nothing, which here has no lodgment.

(*Palmer*) P's Arguments always come after the Judgment.
Q must pay (may God bless Her!) the smart little bill,
If R (Johnny Russell) will only sit still.
S, like the Pope's crown, triple glories attend;
He gives us two Judges, and one valued Friend,

(*Sclopis*) First the President comes—(only Latin can do him),
"Persona verbosa et grandis," bow to him!

(*Staempfli*) Then a Judge of dark countenance, swarthy and stern,
Strong of will (but with some jurisprudence to learn).

(*Sanderson*) And last, ever active, obliging, and *bon*,
Our Treasurer, our Prompter, our *sine quâ non*.

(*Tenterden*) T, spokesman of England, is in the right place,
Doing all things with dignity, judgment, and grace.

(*United States*) U's a nation, our kinsmen, with whom (if they'd let us),
We would gladly be friends, though they sometimes do fret us.

(*Francis Villiers*) V bears a great name, for whose honour all care;
And 'tis certain he'll never its lustre impair.

(*Waite*) Double-U's doomed to Wait; but, no doubt, must be

(*W. W. Palmer*) wishing
To run off with Willie, and spend the day fishing.

X, Y, and Z, all, to stage properties fall;
Cases, Counter-cases, Summaries,
Arguments, and such-like mummeries;

Books of International Law,
Infinite in number,
Which our weary shelves encumber;
Who in the world before ever saw
Such heaps of useless lumber?

Οὖτις, 16*th August* 1872.

CHAPTER XIII

MY FIRST CHANCELLORSHIP

1872–1873

A FEW days before we left Geneva, Count Sclopis addressed me, to my surprise, as "My Lord Chancellor," and would take no contradiction. He had seen a statement that so it was to be, in some newspapers which had not reached me. Intimate as we were with Lord Hatherley, I did not know that his sight was failing in such a degree as to make his retirement probable. But on reaching England, I was met by the following letter from Gladstone, dated on the day when we left Geneva :—

16*th September* 1872.

MY DEAR PALMER—We have now had the full benefit, and a great one it has been, of your assistance in this anxious business of the American Arbitration ; and I presume I may consider you as now entirely *functus officio*. This being so, I think the time has come (I was unwilling to mix the matters by writing earlier), for me to inform you, that the Lord Chancellor has notified to me his intention of retiring on account of the state of his eyesight, which at present makes it impossible for him to reckon on the satisfactory discharge of his duties through another session. He has therefore determined on retiring in

the month of October. In common with all his colleagues, I deeply regret the loss of so distinguished a lawyer, so able and temperate a counsellor, and one whose character is a tower of strength. His retirement does not, as in ordinary cases, impose upon me the duty of considering who should be his successor among the several distinguished men whose names might occur for consideration; but it rather reopens the question of 1868, when the intervention of a particular subject prevented us from obtaining your assistance in the office of Lord Chancellor. Happily, that subject has now been disposed of; and I hope you will accordingly allow me to submit your name to the Queen for that office. There will be a Council at Balmoral about the third week in October, and that would afford a convenient opportunity for your receiving the Seals. The Chancellor, I think, wishes to retire before any Cabinets are held for the purpose of considering the measures of the coming session; and if I receive, as I hope, an affirmative reply to this letter, I will then proceed to arrange with him as to the exact time of the exchange.

I do not think the political prospect is brilliant. We have already outlived the average duration of Governments; and two questions of considerable danger for the next session now confront us; I mean, Irish University Education, and Local Taxation. Our strength in the constituencies rather declines than increases. . . . But you are not now asked to face a question altogether new: you are not a man whom difficulty will deter from public duty; and of both the proceedings and the prospects of the Government you are the best and the proper judge. As to its feelings, I need not assure you, that your entrance into the Cabinet will be hailed with joy by all its members.

. . . . . .

It was not with unmixed feelings that I accepted the offer, as I thought was clearly my duty. In the House of Commons, I had possessed for some years a kind and degree of influence, which I knew could not follow me to the House of Lords. To leave for ever the arena in which all great political questions are

fought and decided, was practically a renunciation, rather than a gratification, of ambition,—one, too, which might diminish not only my own power to serve the public, but that of my descendants. And I was sensible that, although the outward state and dignity of the office of Chancellor remained the same as before, its real power and importance had of late years declined. There was some substantial ground for what Goldwin Smith had said in a letter to me, written as far back as February 1846 :—"To tell the truth, I have not near so much desire to see you in the high places of the law, as engaged in politics with a comfortable fortune. I cannot help thinking that Eldon-dom (to use a *Carlylism*) is rather on the wane. I am not altogether sure that, if subject to the 'last infirmity,' I would not rather launch my name on a decent index to Shakespeare, for instance, than on a Chancellorship, even with some future Lord Campbell for a chronicler." The office, however, came to me in the way of the proper vocation and business of my life, of which it was the natural crown and *terminus*. I had resisted all inducements to deviate from that vocation, when it might, perhaps, have been possible to do so : now, in my sixtieth year, if I had desired it, it would have been too late. To be, even for a short time, the head of my profession, and to be enabled, even imperfectly, to advance those improvements in the administration of the law of which experience had shown me the need, was enough to satisfy a reasonable man's desire. And to co-operate at length officially with Gladstone,

the leader under whom, above all others, I had wished to serve, was (as I told him in my answer to his letter) a pleasure in itself so great, as to overpower for the time almost all other considerations.

I had what I needed, a short interval of rest, before the Queen's pleasure could be taken, and my accession to office publicly known; though the rumours which had preceded my return from Geneva were revived. If I had returned from Geneva after victory instead of defeat, I could not have been more favourably received. The general sentiment was described in the *Times* as "one of profound satisfaction, that we were at length at liberty to consider the *Alabama* question settled." The grounds of the award were not much scrutinised; and, among those who did examine them, there were varieties of opinion. Lord Justice James wrote to me :—

> I cannot help thinking that there is one view of the future results of the case, which has not yet presented itself fully either to the English or American mind. . . . The nature of the American claims, and their success where they succeeded, and the votes which they got where they did not succeed, must compel neutrals who desire to be safe to exclude all belligerent ships from their ports. I must confess, that I, for one, have never been able to understand why an organised force of men and guns coming into neutral territory by sea should be dealt with differently from a similar force crossing a land frontier. But, if this should be the result, it will give us virtually the command of the seas; for we have, what no other Power has, ports and coaling-stations all over the world; and are, therefore, absolutely independent of the hospitalities of neutral ports.

Sir William Heathcote (a man of whose judgment on most subjects, Gladstone as well as myself

thought very highly), wrote from the opposite point of view :—

> The American affair makes me miserable,—not from the amount of the award, three farthings would have implied the evils which I foresee, as much as the £3,000,000. You have done your best for us, and with great power; but, under such conditions as our Government had accepted, you were over-weighted. The result must be, I think, to multiply the chances of war ten-fold. Nations consenting to make payments to an enemy, not to satisfy a just claim, but to bribe him to forbearance (which Lowe openly, and no doubt truly, states to be our case now), have always thereby invited aggression from without. On the other hand, the motive, from within, to ourselves take part in future wars between other nations, will be almost irresistible, from our having consented to make neutrality intolerable. In fact, we are now bound, under heavy recognisances, not to keep the peace, but to break it.

I do not know what the general opinion of those on the other side of the Atlantic, who looked beyond immediate success, may have been. One eminent man, friendly to Great Britain, and of some authority as a jurist,—Mr. R. H. Dana of Boston,—wrote to me : —"All is well over; and, whatever either nation may like or regret in the history, mankind will be a great gainer."

For my own part, I was neither so sanguine as Mr. Dana, nor so much alarmed as Sir William Heathcote. I doubted whether what had taken place would have any great consequences at all, beyond the present settlement of a troublesome dispute. I was (as I said in Guildhall on Lord Mayor's day of that year), "certainly disappointed with the result; but I was very sure that it was in our purse only, and not

in our honour, that we had suffered." My practical view was summed up in the words :—"Having determined to go to that arbitration, and desiring above all things to maintain cordial relations with our American friends and kinsmen, and having got the award against us, let us not grumble about it, but let us make the best of it, and pay the bill."

Meantime our new house at Blackmoor was finished, and on the 24th of September it was opened with a service of benediction by Bishop Wilberforce, our Diocesan, in the presence of my dear friend Claughton, then Bishop of Rochester, and other friends and relations—a solemnity commemorated by a brass tablet, on the inner side of the recess of the hall fireplace, a pleasant chimney-corner, much frequented by many of us; in front of which the legend, "*Ego autem et domus mea serviemus Domino*," was carved on the panelling. The first guests whom we entertained there were Mr. and Mrs. Evarts, who took England on their way from Geneva to the United States. They left us on the 10th of October, after an agreeable visit: and on the 18th Mr. Evarts wrote to me from Liverpool :—

I think we may feel that our personal relations to each other have not been without benefit to the greatest interests of these two powerful nations; and I shall cherish the hope that, in the future, we may have the power, as I am sure we shall feel the wish, to advance and confirm the good dispositions of our respective communities to a complete and perpetual unity, and to discourage and reduce all contrary tendencies. I shall always remember that I was in England when you were made Lord Chancellor, and in your house when your first fire was lighted

in your great hall-chimney; and shall never feel that your public service, or domestic prosperity, are wholly foreign or distant to me.

I was summoned to attend a Council at Balmoral on the 15th of October, and then received from the Queen the Great Seal, and was sworn a Privy Councillor. During the ceremony, an accident happened, which to a superstitious mind might have seemed of bad omen. The Seal (composed of two heavy pieces of silver, by closing which together the impression is produced upon wax enclosed between them) was contained in the embroidered "purse" used in public as one of the symbols of the Lord Chancellor's office; and as in my inexperience I lifted the purse the wrong way from the table on which it lay before the Queen, the seal fell out upon the floor with a loud thud close to one of my feet, which would certainly have been crushed if so great a weight had fallen upon it. No harm, however, was done; and, after the ceremony, Her Majesty gave me an audience, in which she was very gracious, speaking of my friendship for Lord Hatherley, whom she appreciated as he deserved, and expressing her sorrow for the death, which had then lately occurred under very distressing circumstances, of one of our ablest and most learned judges, Sir James Willes. Sir Arthur Helps, the Clerk of the Council, afterwards told me that Her Majesty was "pleased with her new Chancellor," and said "she was sure she would like him"—a piece of information which gave particular pleasure to my wife. Lord and Lady Hatherley were

staying at the Castle, and we exchanged affectionate greetings.

I returned south without loss of time, by way of Leslie, and on the next day (the 18th October) I was gazetted as Lord Selborne. It was a natural sequel to our entrance into our new house that an entertainment should be given at Blackmoor to our tenants, labourers, and workmen, which was done on the 21st of October. In returning thanks for our children I said :—

> My children have one advantage over their parents; they will retain, at all events for some time longer, their old names: but for my wife and myself, if we have changed our names, believe me, we have changed nothing else. I hope we shall always be to you what we have always been. Of my dear son, I will only say, that he loves Blackmoor and the people, and as long as he lives he will continue to love them. I hope God will hear the prayers which have been offered for him, and will bring him up, not (as my excellent and kind friend suggested) to be a worthy successor to his Father, but to be a much more worthy man than his Father can ever hope to be.

On the first day of Michaelmas term, the 2nd November 1872, I took the oaths in Westminster Hall. Among those who went from Portland Place with the members of my family to witness that ceremony, was Mr. Kelly of Plymouth, of which he was Mayor for that year,—then the only survivor of the friends who had been active in my first return to Parliament.

From the announcement of my coming elevation, until the end of October, congratulations flowed in upon us from Bench and Bar, parliamentary and private friends,—among them, my five predecessors

in office then living,—Lord St. Leonards in his 92nd year, Lord Chelmsford, Lord Westbury, Lord Cairns, and Lord Hatherley,—Lord Romilly also, and Sir Alexander Cockburn; the Coleridges, father and son; and the Solicitor-General, Sir George Jessel. I could not then, nor can I now, feel indifferent to such testimonies of goodwill and esteem from men whom I have loved or admired, even when personal kindness may have coloured them too highly.

Lord Hatherley said:—

> You know how much I wished four years ago to see you placed in this position. . . . I can scarcely regret that you were for a time allowed to hold the high place which you attained in the House of Commons, where you possessed the respectful attention and confidence of its members in a degree, I think, unequalled by that felt for any other lawyer of any period.

Lord Russell wrote:—"I am very glad to hear that you have accepted the office of Lord Chancellor. I do not wish you joy, as I think it almost impossible for any one to fulfil the expectations which your past exertions have created of the wonders you are sure to perform";—words, nearly coinciding with what the *Times* said on the same day:—"If Sir Roundell Palmer has a danger, it is, that on his elevation to the Chancellorship all men speak well of him." That was a danger of which I was very sensible. I have always thought, that there was much practical wisdom in the words which Sheridan puts into the mouth of

Mrs. Malaprop: "It is best to begin with a little aversion." It is more agreeable, doubtless, but it is not equally safe, to be welcomed as if the armour were being taken off, at the time of putting it on.

One piece of advice which I then received was on a point, as to which my conscience does not reproach me, when looking back upon my official course. It came from one of my oldest friends, Edward Twisleton, who was the first to congratulate me. He said[1]:—

> I must write to you by the old name for the last time, to tell you of the *extreme* pleasure which I receive from your elevation to the Chancellorship. Wholly independent of Law, I have confidence in you on two points:—first, that in deliberations of the Cabinet you will be fertile in resources; and, secondly, *that in distribution of patronage you will act as a trustee for the country, on the principle of appointing the best man to a vacant office.* This last point is of such enormous importance, that a bad form of government with good appointments is, in my opinion, preferable to a (so-called) good form of government with bad appointments. In Foreign Affairs, I am not aware of any disaster which has befallen England, which is not distinctly traceable to some bad appointment. In Home Affairs, the evil consequences of a bad appointment may be less glaring, but they are no less certain.

From Oxford, I received, with the expression of good wishes, flattering acknowledgments of such services as I had been able to render to the University in my official connection[2] with it and the President of Magdalen conveyed to me the wish of my College,

[1] See, as to Twisleton, Part I. of my *Memorials*. He died on the 5th October 1874.

[2] I was deputy-steward, and also Counsel to the University. The former office had no duties: but, as Counsel, the University authorities had frequently taken and acted under my advice.

that I should sit for my portrait,[1] to be placed in their Hall: which I did.

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20 Arlington Street, 12*th October* 1872.

My dear Palmer—I receive your intimation with regret—for I am sorry that even a formal link which binds you to the University should be broken: but I am well aware that you have no alternative.

Your letter gives me the opportunity of saying how heartily glad we are to hear that you are at last to receive the high judicial honours you have so long deserved. It has happened to few men to gain equal honour by refusing and by receiving so high a dignity. Whether I can as safely congratulate you on coming to the House of Lords I much doubt: but I can very confidently congratulate the House of Lords. But there are consolations even in this case. When I was condoling with the late Speaker upon his elevation to the peerage, he replied: "At least it's a place from which one can get to bed." And there is much that is consoling in that thought.—With our kind regards to Lady Laura, believe me, yours very truly,

Salisbury.

Let me thank you at the same time for a copy of your Geneva speech. I am afraid the arbitrators wholly failed to understand it—or at least to profit by it.

11*th October* 1872.

My dear Palmer—Before a style of address so simple and familiar becomes impossible, I cannot refrain from using the privilege of long-standing friendship in order to offer you my sincere congratulations on your accession to an office, which was of course yours whenever you found yourself able to accept it, and will have never been in more able or worthy hands.

You will receive from all with whom I act a very hearty welcome into our Assembly as its President.—Believe me, yours very sincerely,

Cairns.

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[1] It was painted by W. Ouless, R.A.

My dear Sir Roundell—To the satisfaction which in common with every one, I cannot but feel at seeing the office of Lord Chancellor filled by one so eminently qualified to discharge the exalted functions, the personal regard which has been increased and developed by our recent intimate association, adds vastly to my gratification on hailing you as Lord Chancellor of England.

Time alone is needed, I predict, to enable you to establish a name inferior to none of the greatest of your predecessors.—Yours most sincerely, A. G. Cockburn.

Dear Sir Roundell—The list of Lord Chancellors is a long one, and contains many illustrious names, but it can show no other instance of a man whose appointment has been ratified by the unanimous voice of his countrymen—and by the admiration and esteem of those who can best appreciate those qualifications which have placed you at the head of the Law.—Believe me, yours most sincerely, James Bacon.

To Lady Laura Palmer

Just one line to assure you how heartily rejoiced we both[1] are, that your husband has reached his proper place. Of course personally, and on public grounds, I am very sorry to lose him from the House of Commons. It has been very pleasant to me of late years to watch the singular influence which he has exercised in Parliament;—so unlike anything in my time. Perhaps this could not have gone on for ever. The spectacle of a Government relying so often and so much on the help of one man outside their own body, though very gratifying to the friends and admirers of the one man, had another and different aspect when viewed by those hostile to the Government. The part was sustained wonderfully;—it has now come to an end in the happiest way.—Your affectionate cousin,

Sam Whitbread.

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[1] Writing for his wife Lady Isabella as well as for himself. Mr. Whitbread was M.P. for Bedford.

Of the letters of that time, none touched our hearts more than those which recalled early days, and friends gone to their rest.

My dear Chancellor (wrote the Archbishop of Canterbury)—It would ill become me as an old friend not to send you my own and Mrs. Tait's best wishes on your attaining the great post, for which the voice of the nation has so long destined you.

I trust that every blessing from above may be with you and Lady Laura, and that the nation may long remember your tenure of the Great Seal.

It is strange to look back to our summer at Seaton.[1]

From Torquay came the blessing of Dr. Latham, the lifelong friend of my family.

My brother William, after giving expression to his own feelings, said :—

I rejoice also, in a vicarious sort of way, when I think of my Father, of my Mother, and of others, who have not lived to watch all your progress, nor to rejoice as they would have rejoiced now, to see you reach that point from which, professionally, you can go no higher. However, there always remains the possibility *disponendi ascensiones in corde.*

Nicholas Darnell[2] from Northumberland wrote :—

My dear "Lord High" (this title is, as perhaps you know, borrowed from Anglo-Corfu)—Just a line to you, *amicorum optime maxime*, to rejoice with you on your elevation. May something more than the mantle and woolly sack of Sir Thomas More be yours! You have his spirit,—may you have the light and the grace to offer as good a sacrifice as he did!

And my sister Emma :—

It hardly seems now, as it would have done some years back, a matter of pride and simple congratulation to have a brother

[1] See Part I. of *Memorials*, vol. i. pp. 143, 144.

[2] He occupied himself, after his change of Communion, in teaching pupils ; and translated Dr. Döllinger's principal work.

so high in the world's honours; but it is certainly no less than ever a matter of much joy and fear and thankfulness at once. I hope you may be granted to do some service for God and for our country in your high post: and you will, we know, have the same sufficient help at hand for your great cares and burdens as we may always find in our small ones. Naturally, one's thoughts will go back at such a time to Papa and Mama, and to faithful Parkins, and the pleasure they would have felt: and even now, chastened and purified more than it would have been here the joy may reach them, possibly—we cannot know. Dearest Downie,[1] and now the earthly summit is reached at last, which you aimed at long years ago, when our dear Dorothea, at four years old, announced that *she* knew what Downie was to be, —a "*Chandler!*"

What my wife's thoughts were, she wrote herself, in a letter dated the 13th of October, which followed me on my journey to Balmoral:—

I wish to be the first to address you, after it is lawful to call you L.C. I will not wish my husband joy, for there is much care and responsibility; but I will wish him "to be a faithful soldier and servant unto his life's end," and "to do his duty in that state of life to which it has *now* pleased God to call him."

. . . . . .

"In all time of our tribulation, in all time of our wealth, Good Lord, deliver us!" And all this applies, more or less, to wife and children: and that they may help, and not hinder, their husband and Father, is the earnest prayer of your fond and devoted wife.

The old days seemed to come back again, when, on the 23rd of October, we paid a visit to Winchester College in the company of my colleagues and old schoolfellows, Cardwell and Lowe.

[1] My nickname in the nursery—and used in the family.

To the Rev. Edwin Palmer

30 Portland Place, *24th October* 1872.

. . . Laura and I have been spending two nights with the Cardwells, where Lowe and his wife also were. Yesterday (the most brilliant day of the season) we all spent in a visit to Winchester; going over our old schoolboy haunts, and seeing all the improvements. It was a day of thorough enjoyment: and we were *all* more than satisfied with everything that we saw.—Ever yours affectionately, Selborne.

. . . . . .

Three schoolboys of upwards of fifty years of age were bent on revisiting their school scenes, and a day of greater interest I have rarely spent. The party was E. C., R. L., R. P., Mrs. E. C., and I. We visited every spot, and walked to the top of St. Catherine's Hill, and had such a view. The three schoolboys sat in the very spots where they had sat forty years ago. We hit accidentally upon the day which had been appointed as a holiday for R.'s honours. The descent of such a party entirely unannounced caused some sensation in the school and town. In the Cathedral we ended our day at the service.

Laura Selborne.

On Thursday, the 6th of February 1873, Parliament met, and I took my seat upon the Woolsack. The 2nd of February,[1] four days earlier (which fell that year upon a Sunday, with snow covering the ground), was the twenty-fifth anniversary of our marriage,—our "silver wedding." I wrote for my wife these verses.

Our Silver Wedding! with snow-wreaths adorned,
Winter's pure robe of white, meet for the day,
Which speaks of hearts presented clean and pure
Before the Holiest. . . . . .

[1] Feast of the Purification.

. . . . . .

The feeblest prayer has entrance to the ear
Of the Almighty Father:—and for us
The prayers of Saints, long offered here on earth
By loving lips, then gathered to their Rest;
And some by parents, brothers, sisters, friends,
Still kneeling round in presence or in heart,
Ascended as sweet incense to the Throne.

. . . . . .

Where are they now, that goodly company
Of Parents, Brothers, Sisters, faithful Friends,
Whose prayers ascended up to plead for us
On that auspicious, memorable day?
How thinned their ranks! Though some still bravely stand,
Strong in God's cause and full of love for men,
Bearing the lamp of Life, to hand it down
Haply to children's children,—more are gone;
And now before the Throne of God they stand,
With Her,[1] whose hand of blessing on my head
Stirred young ambition in my childish heart.

. . . . . .

Another generation will spring up,
Our children's children: but, when Time again
Counts the same circuit of revolving years,
I shall be sleeping as my fathers sleep;
And in God's time His voice shall call for thee.
Oh! let not sadness mingle with the thought,
Though one must linger, one must lead the way;
Though Friends and Children must be left behind!
Our God is faithful:—let us trust Him still
With all our Treasures, till that brightest day
When in the Sunshine of Eternal Love
All shall be safely gathered to the fold.

On Christmas Day 1873 I lost my sister, Eleanor Wood, to whom, from the days when my younger

[1] My Grandmother, Part I. vol. i. of my *Memorials* (p. 68).

sisters were in their infancy, I had been particularly attached; and three months afterwards, Emma, the elder of my two remaining sisters, died at Oxford, in my brother Edwin's house, on the eve of Palm Sunday 1874. Her gentleness of disposition, spirituality of mind, clear moral insight, and "patient continuance in well-doing," were wonderful.

Other family changes followed. In the August of that year our daughter Mary married her cousin Lord Waldegrave, and, two years later, in October 1876, our eldest daughter Laura married George Ridding, then Headmaster of Winchester, now Bishop of Southwell.

In the autumn of 1874 I made two interesting visits,—one to my old constituents at Plymouth, upon the opening of their new Town Hall by the Prince of Wales; the other to Bishop Fraser at Manchester, where I had to distribute prizes to the successful candidates at the Oxford Local Examinations. I had not before known the Bishop, to make whose acquaintance would have been worth a longer journey. He was a first-rate Oxford scholar, a Fellow of Oriel, and after he left Oxford a diligent parish priest in Wiltshire; sympathising strongly with the poor, and combining practical good sense with great manliness of character. As Bishop of Manchester he was beyond all question in his right place.

To the Countess Waldegrave

Blackmoor, Petersfield, 25*th March* 1875.

I must not let your birthday,—the first birthday since you left the old home,—pass by without a few lines to wish you all happiness, and most of all that inward happiness, which nothing in this world can either give or take away. I hope many years may be in store for you, during which you may be not only happy yourself, but a continual source of ever-increasing happiness to your husband, and (if it should please God to give them) to children also. For this, only two things are needful: the one, trust, or rather faith, in God; the other cheerfulness and contentment, and a conscientious care to make whatever we have, by His Providence, sufficient for us. "Godliness, with contentment, is great gain": and, again, "A man's life consisteth not in the abundance of the things which he possesseth."

I have myself so long been accustomed to the union of those thoughts, which remind us of the transitory nature of all things earthly, with thoughts of happiness, that I almost welcome, for your sake, the association of your birthday with the last parting of our friends at Hagley, from all that remained here of the friend whom you so well loved.[1] I do not doubt, that she is now in the enjoyment of those blessings, of which the Palm Sunday on which she died, and the Holy Thursday and Lady Day on which she was buried, are among our most significant earthly commemorations. It was, I think, on the same day in Passion Week, last year, that we laid what was mortal of your dear Aunt Emma in the ground. Let the memories, darling Mary, of these and other dear ones, ever be kept alive in our hearts, as lights, shining over our path in life, from that other better world.—Believe me, ever your most affectionate Father,

Selborne.

[1] The Hon. Mary Catherine Lyttelton.

CHAPTER XIV

THE JUDICATURE ACT

1873

My first Chancellorship lasted for sixteen months and five days, within which space of time I was enabled to bring forward and carry through Parliament the Judicature Act of 1873. It was the work of my own hand, without any assistance beyond what I derived from the labours of my predecessors; and it passed, substantially, in the form in which I proposed it.

What it did was to bring together, in one Supreme Court divided into two branches, the one of original and the other of Appellate jurisdiction, all the judicial powers of the previously existing Superior Courts in England which had, until then, exercised separate and sometimes conflicting jurisdictions; with arrangements for the subdivision of the High Court (as the branch of the Supreme Court exercising original jurisdiction was called) into Divisions, or Chambers, for the more convenient distribution of business; giving to all the Judges, in every Division, equal jurisdiction in Equity as well as Law; enabling

them all to give assistance, when needed, in Divisions not their own; providing for a procedure, in all Divisions, as far as possible uniform; making all times, throughout the legal year, available for all London business; and excluding all unnecessary circuity or multiplicity of proceedings, with reference to the same disputes, or between the same contending parties. It contained provisions as to the offices and officers of the Court; for facilitating the transaction, in the places where litigation might arise, of such business as might more conveniently be done elsewhere than in London; and for other objects incidental to the general scheme. To make the transition easy from the old system to the new, each of the three Courts of Common Law (the Queen's Bench, Common Pleas, and Exchequer), was in the first instance made a separate Division of the new High Court: but power was taken for the Crown, whenever it might be thought expedient, upon the advice of a General Council of Judges, to reduce the number of Divisions: and [early in my second Chancellorship] that power was exercised; advantage being taken of simultaneous vacancies in the offices of Chief-Justice of England and Chief Baron, to merge the Common Pleas and Exchequer Divisions in the Queen's Bench. [It had been seen from the beginning, that reasons of principle and practical convenience would not permanently require more than three Divisions—one corresponding with the old Courts of Common Law; one with the old Court of Chancery; and the third with the old Courts of Admiralty, Probate, and

Divorce. But at the outset, policy and sentiment, which recommended the other course, could not be disregarded.

The foundation of this reconstruction of the Judicial system was laid in 1869 by the first Report of the Judicature Commission, of which I was an active member; the appointment of that Commission having been the result of my speech in the House of Commons upon the same subject in February 1867. Much as I profited by the experience and wisdom of others, I might, without presumption, take to myself some credit for the initiation, advancement, and completion of this work. If I leave any monument behind me which will bear the test of time, it may be this.

During the interval between 1869 and 1873, those[1] who preceded me in office had made several efforts in the same direction; and I had the advantage of learning from their experience, and from the criticisms with which they were met, what dangers to avoid, and what were the necessary conditions of success. The Bills introduced before 1873 were too much in skeleton form, containing, upon many points which it was neither desirable nor safe to leave indefinite, mere outlines, to be filled up by judge-made rules—they dealt irresolutely with the Appellate jurisdiction—and counsel was not taken, before their introduction, with the leading judges and others, from whom support would be of great value, and

[1] Not only Lord Hatherley, but (with respect to the Appellate jurisdiction) Lord Cairns.

opposition formidable. I was careful to steer clear of those errors, as far as I could; and as soon as my Bill was prepared before the meeting of Parliament, I sent copies of it to Lord Cairns, Lord Hatherley, Lord Westbury, and Lord Romilly, the two Chief-Justices (Cockburn and Bovill), Chief Baron Kelly, the Lords-Justices (James and Mellish), and the Attorney- and Solicitor-General; giving them the opportunity of suggesting objections and amendments. The result was that when, on the 14th February 1873, I explained my scheme to the House of Lords, and presented the Bill, I had received general assurances of approval from the most influential of them, and expressions of opinion, encouraging on the whole, even from those (particularly Lord Westbury and Lord Romilly) who were more disposed to be critical. As soon as it was introduced, I sent copies to every Judge, inviting from all free comment and friendly suggestion. The result was to strengthen me in many ways. From Bench and Bar of the Common Law Courts, I obtained cordial and decided support; and, if I could not say quite as much of those whose special experience was in Equity, and who were distrustful of the effect of the proposed fusion of jurisdictions upon equitable jurisprudence, I succeeded in disarming, even from that quarter, active opposition; while from Lord Cairns and Lord Hatherley, whose authority could not be gainsaid, I received powerful and consistent help. Lord Cairns wrote on the 3rd of February:—"The Bill appears to me to be drawn with great care and skill; and,

subject to an observation I have to make on the question of Appeals, I hail it with great pleasure, as a comprehensive and masterly scheme for accomplishing the great objects we had in view in the first Report of the Judicature Commission. There may be suggestions on details, with which, on a closer perusal, I may trouble you, if possible, before its final printing; but these are small matters." Chief-Justice Cockburn said[1]:—"Pray accept the tribute of my sincere admiration of the great and comprehensive scheme of legal reform, which you are about to submit to Parliament, and which is indeed worthy of the adoption of the British Legislature. It is a work conceived in a great spirit, and one which must redound to your lasting honour and renown." Chief-Justice Bovill and the Lord Chief Baron wrote in terms not less favourable.

Lord Westbury was the only man of importance who seemed, during the progress of the measure, to retract the approval with which he at first received it. He wrote from Worthing, where he was detained by illness, on the 16th of February:—

I have read your speech[2] with much pleasure, and I hope that I have formed a correct idea of the colossal plan which you have developed. If so, I shall give you my most hearty support. It is quite true, as you know very well, that the plan is open to many serious objections and difficulties. What plan of equal extent would not be so open? You have, in my judgment, done right in presenting the entire jurisdiction as a whole. The

[1] 7th February 1873.

[2] He had not then seen the draft Bill, which I had sent to his London house.

scheme requires to be considered in its relations and dependencies. No doubt, if established, it will require much succeeding legislation, to remove obstructions and difficulties that may arise in the working of so vast a machine. I should not think of representing it as a thing perfect in all its details. It will be in great danger from the cowardice of many, and the self-interest of others. It exceeds so much what men have been in the habit of expecting and contemplating, that many will pronounce it a grand ideal, too vast to be practical; while others will band themselves against it (as they did against my Land Transfer Act), as being a thing destructive of their present professional status, practice, and means of livelihood. I shall, of course, be obliged to notice many of the difficulties; but not as reasons why the Bill should not be proceeded with; only as objections, which are greatly outweighed by the advantages of the entire scheme.

Lord Westbury did not recover from the illness under which he was then suffering; and it may have been for want of the opportunity of taking part in the public discussion of the measure to which he had looked forward, that he afterwards criticised it in a less friendly way, in conversations with Lord Cairns and myself. More than one stage of it was delayed, and every arrangement which was possible was made to enable him to be present, but in vain. It was not till the middle of May that the nature of his malady was ascertained; it was very painful, and required constant rest. He then wrote to me, that its cause was "a deep-seated inflammation of the coating surrounding the upper vertebræ of the neck"; and that there was little or no chance of his being able to take any continuous part in judicial or legislative matters during the rest of the session, if at any future time. He

went on to suggest, in a tone of irony, that I had yielded to "a temptation which prompted me to cast myself and the prize I held in trust down from the high summit on which I had been set, and to commit suicide of my high dignity, and to take it away from the ambition and the aspirations of the youth [1] of the kingdom." What there was in the Judicature Bill derogatory to the dignity and importance of the Lord Chancellor's office, even if its holder had been (as I proposed) an Appellate Judge and Head of the Supreme Court only,[2] I could not see; nor do I know whether Lord Westbury was satisfied with the change, in that respect, which Lord Cairns caused to be made. He may, perhaps, have written as he did from a morbid feeling; or he may have thought the separation of the Appellate jurisdiction from the House of Lords likely to affect prejudicially the authority of future Chancellors. It is possible, that if he had been able to attend the debates, and had been a hostile critic, he might have endangered the success of the measure: as it was, he reserved, for my own and other private ears, the expressions of the misgivings or dissatisfaction which he felt.

My Bill, however, narrowly escaped shipwreck upon the question of the Appellate jurisdiction;

[1] See *post*, p. 322.

[2] This was changed by an amendment of Lord Cairns, who made the L.C. nominally head of the High Court, as well as the Court of Appeal.

and, though it did escape for the time, that part of the scheme was not destined to come, without change, into practical operation. I asked the House of Lords to part, in English cases, with the authority exercised in their name by the Legal members; and they consented to do so, notwithstanding some strong opposition (particularly from Lord Redesdale), with less difficulty than might have been expected. I desired to put an end to the expense and delay incident to the system of double Appeals; and for that purpose to concentrate in one Court of Final Appeal all the Judicial power which was or could be made available for that purpose; abolishing the intermediate jurisdictions of the Exchequer Chamber and the Court of Appeal in Chancery. The new Court of Appeal would have consisted of nine ordinary Judges, a number sufficient for the transaction, in Divisions of three Judges each, of all ordinary current business; and with the further strength in reserve of five *ex officio* Judges (the Lord Chancellor, the Heads of the three Common-Law Divisions of the High Court, and the Master of the Rolls), and as many Additional Judges, selected by the Crown from those who had held the higher Judicial offices in England, Scotland, and Ireland, as might from time to time be found practicable and convenient. It would thus have included all the elements of the four previously existing Courts of Appeal, except the Exchequer Chamber; and for the Additional Judges no salaries would have been necessary. Power (which would

certainly have been exercised) was taken for the Crown to refer Indian and Colonial Appeals to the tribunal so constituted, in the same way as they were then (and are now) referred to the Judicial Committee of the Privy Council. Its Judgments were to be final, subject only to a power, in any case of sufficient difficulty or importance, to rehear an Appeal decided by a Division of three Judges before a greater number.

With respect to Scotch and Irish Appeals, it was not safe or expedient, in a constitutional point of view, to remove them from the House of Lords, without a deliberate expression of Scotch and Irish opinion in favour of that course: and it was not thought prudent to encumber the measure with any provisions as to Ecclesiastical Appeals, without some assurance, not easily to be obtained, that they would not provoke opposition from any of the parties which divided the Church. That all these classes of Appeals would eventually be brought to the new Court, after its satisfactory working had been proved by experience, was probable and desirable. But, until that could be done at the instance, or with the consent, of those most interested in them, they might, without serious inconvenience, remain as before. Their numbers were not great enough to interfere with the efficiency for its intended purposes of the new Court.

The conclusion, that the Appellate jurisdiction of the House of Lords ought not to stand in the way of the establishment of the best possible Court

of Final Appeal for England, was one at which I did not arrive hastily, or even willingly. But everybody had thought, for at least seventeen years, that some change was necessary; many proposals were made, but nothing was done. The first attempt was in 1856, when Lord Wensleydale was created a Peer for life; and, when the House of Lords disallowed his claim to sit in it under that patent, Lord Cranworth introduced a Bill, which would have conferred life-peerages upon two salaried Law Lords. That Bill met with no favour in the House of Commons; it was opposed by Sir James Graham in a caustic speech, which was practically fatal to it. I supported it, saying, that I thought there was some gain of dignity, independence, and stability, to the administration of justice from its association with the House of Lords, and to the House of Lords from its association with the administration of justice. But I also said, that any price which might be necessary for the establishment of a really satisfactory Court of Final Appeal must be paid, even if it should be the removal of Appeals from the House of Lords to some other tribunal. In my speech eleven years afterwards, which led to the appointment of the Judicature Commission, I suggested in outline the plan which I proposed in 1873. Chief-Justice Cockburn made a similar suggestion in 1871, saying: "Surely the time has come when the House of Lords may be asked to give up a jurisdiction which it has only in name, which the House itself does

not and cannot exercise, and which, although exercised in its name, is in reality committed to three or four Law Lords. It may be hoped that, in furtherance of the public interest, the House would, without any great difficulty, be induced to part with so shadowy an authority." The opinion thus expressed by the Chief-Justice of England was shared by Sir George Jessel and other leading men at the Bar and on the Bench. In 1872 the House of Lords appointed a Select Committee to consider the subject, without any satisfactory result. Lord Cairns proposed, and the Committee agreed, that the jurisdiction of the two Final Courts of Appeal should be exercised by a Court consisting of the Lord Chancellor and four salaried Judges, and (as *ex officio* members) of all who had been Lord Chancellors or Judges of the Superior Courts in England, Scotland, or Ireland, of the three Chiefs of the Superior Courts at Westminster, of the Lords-Justices of Appeal in Chancery, and of the Judges of the Court of Probate and Divorce and the Admiralty Court. "And then" (as I said when introducing the Bill of 1873) "arose the question, what was to be the relation of those Judges to their Lordships' House?" It was proposed they should be Judicial Peers, not having power to sit or vote upon any but judicial business; and, although Lord Cairns wished the House also to be assisted by them in Committees on claims to Peerages, and cases of impeachment, this was more than the Select Committee could be induced to agree to.

Some of the members of that Committee were greatly dissatisfied with their own proceedings, and with the manner in which the subject had been treated. This I knew from Lord Ossington, who served upon it: and Lord Cairns himself wrote[1]:—

> I am strongly persuaded, that the safe and easy way of dealing with this [the Appellate jurisdiction of the House of Lords] is on the lines suggested by the first Report of the Judicature Commission; *i.e.* by erecting a *very* strong Court of Appeal *in* the Supreme Court, and practically "choking off" the power of appeal, first, in small cases; second, when there is unanimity in the two first Courts, etc.; and leaving the Court to gain public confidence, and thus to lead to a cessation, rather than a transfer, of the jurisdiction. It is true, that this would not meet the case of Scotland and Ireland; but much might be done in strengthening their Appellate Courts at home; and there would be both reason and advantage in dealing with England first, where a general reconstruction of the Judicial system cannot be delayed.

Lord Cairns, though preferring this way of treating the matter, did not press it against my own view; which was, that if, instead of letting important cases be reheard in the Supreme Court itself before a greater number of Judges, a second Appeal to the House of Lords were in such cases allowed, the practical effect would be to deprive the Appellate branch of the Supreme Court of the services of the Law Lords, as "Additional" Judges; a loss too serious for me to be willing to incur it, when the object of securing adequate consideration for those cases might be obtained with greater facility, and with less expense and delay in another way.

[1] 11th October 1872.

It was not till the Bill was in Committee in the House of Commons, that anything happened to place it in peril. But, after that stage had been reached, there was a sudden expression of opinion among the members of the legal profession in Scotland and Ireland, against any change in which Scotch and Irish Appeals should not be included; the form which it took being rather that of a demand that Scotch and Irish Appeals as well as English, should go before the new tribunal, than of opposition to the constitution of the new tribunal for English Appeals. Notice was given by Mr. Bouverie, a Scotch member, that he would make a motion in that sense; and the Government, after taking counsel with the Scotch and Irish Law Officers, determined to endeavour to satisfy what they supposed to be the wish of those best entitled to speak on behalf of Scotland and Ireland. In that resolution I acquiesced, not without much misgiving. On the 30th of June, Mr. Gladstone announced it to the House in Committee, proposing to give effect to it in a later stage of the Bill. Mr. Disraeli suggested that so sudden and important a change was the reason for postponing the whole measure for another year; and, four days afterwards, the situation was complicated by another sudden change, of which I had no previous notice. Lord Salisbury had proposed in the House of Lords[1] that Ecclesiastical Appeals should go to the new Court, with the rest of the Privy Council business; but he did not press his motion to a division.

[1] 5th May 1873.

Bishop Wilberforce, very much wishing this to be done, wrote [1] to Mr. Gladstone on the 3rd of July: "Now that Scotland and Ireland have been included in the Judicature Bill, can you not strike out the only other exception, the appeal in cases ecclesiastical?" He added, that there was a very general agreement of opinion upon the point in the House of Lords, and that it had only not been done there, because I was afraid of difficulties in the Commons; and that "it would be the greatest conceivable gift to the Church." He induced Mr. Gathorne Hardy to propose it the next evening; Mr. Gladstone consented; and it was agreed to by the House with extraordinary unanimity. Mr. Gladstone expected (as he told the Bishop) [2] that, in return for this, the Episcopal Bench would give the Government active help at the proper time, "if the Bill should be endangered by movement from any quarter": and to myself he wrote [3] of dangers, and "a plot against the Bill," reported to have been formed by Cairns and Disraeli, the consummation of which would (he hoped) be impeded by the change so suddenly made.

Whatever report Mr. Gladstone may have heard, Lord Cairns (I am sure) was never, directly or indirectly, a party to any plot for destroying or damaging the Bill. No behaviour could have been more straightforward than his in the whole matter, from first to last. If the Government had persisted

[1] *Life of Bishop Wilberforce*, vol. iii. pp. 417, 418.
[2] *Ibid.* p. 418. [3] 4th July 1873.

in an attempt to legislate at that time for Scotch and Irish Appeals, he would have been fully justified in resisting it; and the responsibility for the loss of the Bill, if that had been the consequence, would not have been his. What he did was to take a course, perhaps irregular, but calculated, and (I have no doubt) intended, to prevent that consequence. Instead of waiting till anything irrevocable was done in the House of Commons, he took notice in the House of Lords[1] of Mr. Gladstone's announcement as to those classes of Appeals, as raising a question of privilege between the two Houses; and, although this may have been an extreme and untenable view of the privileges of the House of Lords (as I thought it) it gave the Government a convenient opportunity of reconsidering their position, with reference to that new issue. In the result, they wisely determined to defer any legislation as to Scotch and Irish Appeals until a future Session. With respect to Ecclesiastical Appeals, I succeeded in making an arrangement with the two Primates and the Bishop of London (who did not share Bishop Wilberforce's views) for a modification of the Commons' amendments so as to provide for the presence of Bishops as Assessors in the new Court; and so the Bill passed.

The consequences of the new position, which the question of the Appellate jurisdiction had been made to assume after the Bill left the House of Lords, were not, however, at an end. Further legislation upon the subject, in one direction or another, could not be

[1] 8th July 1873.

indefinitely postponed. The Act was not to come into operation until the 2nd of November 1874; and a prolongation of the time proved to be necessary. During the interval, Mr. Gladstone went out of office, and Mr. Disraeli came in. Lord Cairns, adhering to the principles of the scheme which had received the sanction of Parliament, brought in a Bill in 1874 for the transfer of Scotch and Irish Appeals to the new Court, which passed the House of Lords, notwithstanding opposition from Lord Redesdale and others, but fell through in the House of Commons; and, at the beginning of the session of 1875, he introduced the same Bill again. But in the meantime, the Conservative feeling, which had never cordially accepted my plan so far as it related to the House of Lords, and in which not a few Liberals were found to participate, gathered strength. Lord Penzance, who had taken no active part in the discussions of 1873, Lord O'Hagan, who had appeared as a consenting party to what was then done, and Lord Moncreiff, the Liberal Lord Justice-Clerk of Scotland, all ranged themselves on Lord Redesdale's side. The opinion of the legal profession in Scotland and Ireland was declared to be in favour of restoring the jurisdiction of the House of Lords as to English Appeals, rather than taking it away as to Scotch and Irish. An association for that purpose was formed, outside Parliament, of which Sir George Bowyer, Mr. James Stuart Wortley, and Sir William Charley (Common Serjeant of the City of London) were the most prominent members. Honest men, all; but they would not have succeeded

if more powerful men had not been of the same mind. I have never doubted that the new Prime Minister was on their side. For myself, I resisted this movement with all my might, both in 1874 and in 1875: but when Lord Cairns at last yielded to it, as he did on the 8th of March 1875 (when he reluctantly withdrew the Bill introduced at the beginning of that year), I could do no more. On the 9th of April following, he brought in another Bill, to suspend for another year all the provisions of the Act of 1873 which related to the Appellate jurisdiction; and, in 1876, they were repealed. Instead of them, the jurisdiction of the House of Lords, strengthened by the addition of two, and eventually[1] four salaried Life Peers (who were also to serve on the Judicial Committee of the Privy Council), was restored;—a Court of Intermediate Appeal, consisting of six ordinary and several *ex officio* Judges, was constituted, and the Judicial Committee was left unchanged, except that in Ecclesiastical Appeals all the Bishops were to attend as assessors in rotation, and not as Judges; and Admiralty Appeals were transferred to the House of Lords. The system of double appeal, to which I had so much desired to put an end, and which Lord Cairns himself had wished to reduce within as narrow limits as possible, was brought back

[1] On the death or resignation of the last survivor of the salaried members of the Privy Council; which event happened in November 1890. [The Law Lords were not made Life Peers by Lord Cairns's Act, but Peers during office, and they lost this privilege on resignation. Lord Halsbury brought in a bill ten years later to preserve their privileges notwithstanding resignation.—K. M. M.]

without check or restraint. So things remain until this day. I said in 1875, that acquiescing, as I did under protest, in what was then done, I was too sensible of the evils of frequent changes on such subjects to contemplate any new disturbance of the settlement so arrived at. To that declaration I have since adhered.

CHAPTER XV

PARLIAMENTARY AND JUDICIAL WORK—WINCHESTER—BISHOP WILBERFORCE—OXFORD UNION SOCIETY—CHANGE OF GOVERNMENT.

1873–1874

The only legislative work, besides the Judicature Act, which fell upon me personally in 1873, was a Bill on the subject of Land Titles and Transfer, which I carried to a Second Reading on the 23rd of May. I can claim for it no other merit than that of being one in a series of steps (the first taken by Lord Westbury) towards the solution of a problem, still, while I write, unsolved. That problem is, how to substitute in England a system of transfer by simple entries in a public register for that of private conveyances by deeds, and eventually to get rid of the necessity of looking beyond the register for titles, on the faith of which purchasers of land may safely invest their money. Lord Westbury's Act was too complicated; it required every one registering under it to make out his title to the satisfaction of the Registrar; and the registration was to be in all cases voluntary. Practi-

cally, it was a failure. I proposed to simplify, and in some respects to relax, the conditions on which land might be registered with a certified title: and also (which was more important) to register possessory titles, without any investigation by the Registrar beyond what was necessary to prove possession under some claim of right; and, further, that, after a limited time, registration should be compulsory upon every sale of land. The register was to be conclusive against claims, arising out of transactions subsequent to the first registration, as to the same land, but not against those prior to such registration, when the title was only possessory. As to these, a purchaser from the registered owner would still have been obliged to investigate the earlier title: but, after such a lapse of time as would practically exclude or bar outstanding claims, that necessity would cease, and the register would thenceforth become the sole evidence of the transferable title. I proposed also to shorten the time of limitation. Lord Cairns, during his last Chancellorship, passed measures partly founded on these proposals; not, however, making registration of unregistered land under any circumstances compulsory. His success was hardly greater than Lord Westbury's: and some compulsion has since been recognised as necessary for the success of any measure of that kind.[1]

[1] Lord Selborne supported a Bill of Lord Chancellor Halsbury for introducing compulsory registration of title to land, and also sat for a long time in the Select Committee of the House of Lords upon it. An Act recognising the principle of compulsion was passed in 1897.—K. M. M.

In the House of Commons, the chief Government measure of that session, the Irish University Education Bill, came to an untimely end, as indeed it deserved. Gladstone, in his Lancashire speeches of 1868, had classed the evils requiring to be redressed in Ireland under three heads—the Church, the Land, and University Education. With the two first he had dealt boldly, and (as it seemed in 1873) successfully: but, in his attempt to deal with the third, he was neither bold nor successful. The prejudices of more than one powerful section of the Liberal party prevented him from entertaining the idea (if he was himself so disposed, of which I am not sure) of giving the Roman Catholics what they wanted—a University of their own. But without conciliating them in one way or another, nothing could be done. The result was a feeble compromise, by which a Roman Catholic College would have had a share in the constitution and government of the intended new University; but there would have been a mutilated Faculty of Arts, from which Moral Philosophy and Modern History would have been excluded; because, upon those subjects, the Roman Catholics would not trust Protestant teachers or examiners. For this I had that share of responsibility which every Cabinet Minister has for all Government measures: but I could not shut my eyes to the objections to which it was open, nor feel much disappointment when, on the 11th of March (the day on which the Judicature Bill was read a second time in the Upper House), it was rejected by the

House of Commons. Gladstone thought that defeat a sufficient reason for tendering our resignations; but Disraeli did not choose to take office upon that opportunity; so we remained as we were.

My work, in 1873-74, was not less severe than when I was at the Bar. Partly owing to my habit of going thoroughly, for myself, into everything for which I was responsible, I was during the whole of that time under very great pressure; and there were frequent questions with the Treasury and other Government offices, besides the ordinary duties of my department. I had more judicial work thrown upon my shoulders at that time, than (perhaps) ever fell to the lot of any other Chancellor, before or since. Lord Romilly, in broken health, desired to resign the Mastership of the Rolls after Easter, which fell in that year on the 13th of April; it was not possible for him to continue to sit in court after that day. Coleridge decided not to take that office; and the succession to it fell, as a matter of course, to Jessel. But the Judicature Bill had still to be carried through the House of Commons; and it was more as to Equity than Common Law, that technical questions were likely to arise. Jessel's assistance, therefore, in the conduct of it was indispensable. Gladstone wrote to me on the 24th of March, that for this and other reasons it was of great importance to hold over, in some way or other, the question of a new appointment to the Rolls till the end of the session.

There was, under these circumstances, only one thing which could possibly be done to meet Gladstone's

wishes, and at the same time avoid danger to my Bill. Lord Romilly was willing to delay his formal resignation, if the business of the Rolls Court could be in the meantime provided for; and there was no other way of providing for it, except by taking it myself. The office was not one which could be put into commission. I accordingly arranged with my coadjutors in the House of Lords that they should hear the Appeals there in my absence, until a new Master of the Rolls could be appointed; and I issued an order on the 5th of April, transferring to myself, as Lord Chancellor, all causes and matters of every kind depending at that time in the Rolls Court.[1] From the beginning of the sittings after Easter, till the Long Vacation, I sat as a Judge of First Instance, doing the whole of the Rolls business in Court and Chambers, which was very heavy; interrupting it only on one or two occasions, when my presence was wanted in the Court of Appeal. Nor was I entirely released from that kind of labour, even after the 11th of August, when Jessel was appointed to the office, the duties of which he so ably and energetically performed. The illness of my friend Sir John Wickens obliged me to act, for a short time afterwards, as Vacation Judge in Chancery.

In the midst of these absorbing occupations, I found one day to go down to Winchester, to open, by invitation of the Mayor and Corporation, their new Town Hall, a fine building, just completed.

[1] By an Act of 1881 the jurisdiction of the Master of the Rolls as a Court of First Instance was abolished.

The Mayor was Mr. Frederick Morshead, not the least popular, of the Masters of Winchester College. Bishop Wilberforce met me there; and, after that function was over, we proceeded to the College, which I had been requested, by a Latin letter from the Præfect of Hall, to visit upon the same occasion in a more formal and ceremonious manner than when accompanied in the preceding autumn by Cardwell and Lowe. There, with the Bishop, the Warden, Dr. Ridding, my future son-in-law, and the other Masters of the School by my side, I was received "*ad portas*"[1] by the Præfect of Hall and all the scholars, and conducted to the centre of the Great Quadrangle; where (the boys standing round) the Præfect of Hall addressed me in a Latin speech, in which I had the pleasure of hearing myself called "*Wiccamicorum maxime Wiccamicum.*"[2] To this I meant to have replied in Latin, and to give my hearers "an opportunity of observing how far it is possible in mature life to forget those studies which occupied so large a portion of one's boyhood." But I was told, that English would be liked better; and so I spoke in English, repeating what I had already said at the Town Hall, that "my associations with the College had made me love the very stones of Winchester, the place, the people, and everything connected with it. I felt as if they had all been to me benefactors throughout my life." It was a pleasant day, a bright spot among heavy cares.

[1] "*At the gateway*": where the electors are received at the Annual Elections. [2] "*The most Wykehamical of Wykehamists.*"

What passed on that occasion was made use of by Lord Westbury as a sort of text, on which to build the irony of the letter written to me on the following day, the 15th May, to which I have referred in the last chapter,—that in which he suggested, that I had done what would "take away my high dignity from the ambition and aspirations of the youth of the kingdom." I little thought, that within a few weeks from that time, both Bishop Wilberforce, who stood by my side at the reception in Winchester College, and Lord Westbury, who rallied me upon it, would have passed away. But so it was. The accident which was fatal to the Bishop took place on the afternoon of the 19th July; and Lord Westbury died the next morning, having sent me a message (too late) that he wished once more to see me. I was among those who, two days afterwards, endeavoured in the House of Lords to pay some fitting tribute to men so conspicuous for splendid ability, lost to it at the same time. Of Lord Westbury,[1] my office, the personal relations which I had with him, and what had passed between us as to the Judicature Bill, made it my particular duty to speak; and I referred to the circumstances connected with his resignation of the Chancellorship in 1865, for the purpose of reiterating my conviction, that in the transactions, as to which he was thought to have been wanting in vigilance, there was nothing to leave any stain upon his public or private honour,—that he had suffered (so far at all events) for the faults of others, not for his own.

[1] As to his character, see *Memorials*, Part I. vol. ii. pp. 490-492.

To the memory of Bishop Wilberforce, more is due from me than could have been then said, either by myself or by others, in the House of Lords. Of his powers, his public work as a ruler of great and lasting influence in the Church, and of the manner in which he performed the duties of his office in both the dioceses (Oxford especially), over which he presided, it would be superfluous to speak; these are matters of history. As a man, justice has not always been done to him. There was a mannerism about him, not like that of Lord Westbury, precise and affected, but with some excess of emphasis and *empressement*, which, with his great versatility, the variety of his interests, and his taste for and facility of social intercourse with many different sorts of men, told against him with those who did not understand or were not in sympathy with his principles. His energy was extraordinary; his activity restless and incessant; it was a defect in him that he allowed himself no intervals of repose, and that his judgments of men and things were not always calm or unprejudiced. But he was a man of large mind and great heart, with his soul in his work. If, in some regions of worldly society, he might be thought too sympathetic and demonstrative to be true, his courtesy and kindliness were not assumed for that society only, but were the same for friends of every degree, for all ranks of the clergy, for young people and little children, and for the humblest poor. If he seemed to be "all things to all men," it was from no unworthy motive; but that he might do to all what-

ever good he could, and so help forward his Master's cause. Those who knew him best loved him most; —he was sincere within, consistent with himself. Arthur Gordon, who was admitted to his intimate confidence, knew him better than I did, and had unbounded esteem and affection for him: but I knew him well enough not to misunderstand his character.

During that vacation, Chief-Justice Bovill, a genial, kindly man, but as a lawyer not particularly remarkable, died after a very short illness; and Sir John Duke Coleridge received, with a peerage, the promotion due, not only to his official position and his great powers and services, but to the self-denial with which, when no such prospect was in view, he had declined the Mastership of the Rolls. I rejoiced that his father, my constant friend, then in his eighty-fourth year, should have lived to see these crowning honours of the intellectual eminence, which had descended in that remarkable family through three generations. The Bench, which thus gained in Lord Coleridge a finished orator and most accomplished man, had a few days before lost another Judge, also an Etonian and Oxonian, and not less accomplished, though no orator,—Sir John Wickens, my friend from our youth.[1] He had a country place not very far from Blackmoor, at Chilgrove, in one of the hollows of the Sussex Downs; and there, on the 23rd of October, he died, much lamented, and not least by me. Sir Henry James,[2] who had succeeded Sir George

[1] *Memorials*, Part I. vol. i. pp. 134, 135.

[2] Afterwards Lord James of Hereford.

Jessel as Solicitor-General, now became Attorney-General: and the appointment of William Vernon Harcourt to succeed him as Solicitor was justified, in my own as well as Mr. Gladstone's opinion, by his reputation as an international jurist and parliamentary debater, although he had not much practice at the Bar.

On the 22nd of October, the day before Sir John Wickens died, the Jubilee of the Oxford Union Society was celebrated by a dinner in the Corn Exchange at Oxford, at which I presided. The dinner itself was tedious and ill-managed, perhaps unavoidably on account of the great number of guests; but the interest of the proceedings was great. There were present men who had taken a leading part in the Society's debates, almost from the time of its first foundation by Dean Milman, Augustus Hare, and others;—among them Lord Salisbury, the Chancellor of the University, and both its representatives in Parliament; Archbishop Tait; Manning, not yet Cardinal; Lord Stanhope the historian; Cardwell; Herman Merivale; Edward Twisleton; Coleridge, not yet Chief-Justice; Goschen; Ward Hunt; Mellish; Matthew Arnold; Mountague Bernard; Sir Francis Doyle; Bishops Durnford and Mackarness; Professor Jowett, and Dean Lake. Gladstone was not there;—if he had been, no one else could have filled the chair. In proposing "Prosperity to the Oxford Union Society," I referred to a debate five years after its foundation, in which "the modest and hesitating proposition," that "Eloquence had produced greater good than evil to mankind," was supported by one voice,

opposed by another, and affirmed by a very small majority. Not reviving that controversy, I said, that "the government of men had been with that power; it was so still, and so it would continue. The Society had been formed to cultivate it. Now, everybody could speak, and (I regretted to say) everybody did speak. It was not less necessary, however, than it had been fifty years ago, that they should endeavour to speak well: and, if it were possible to learn to speak shortly, that would be no derogation from the attainment." I added that the assemblage was not what it ought to be, in the absence of Mr. Gladstone; and I referred to the eloquence and genius of the Prime Minister, and to the promise of future greatness which he gave when a young member of the Oxford Union.

Late in January 1874, after Parliament had been summoned to meet for business on the 5th of February, Gladstone resolved upon an immediate dissolution. I believe that the motive for then taking that step was the difficulty in which he found himself about his seat for Greenwich.

After the prorogation in August, some changes had been made in the distribution of Government offices; one of which was the removal of Lowe from the Exchequer to the Home Office, and Gladstone's assumption of the office of Chancellor of the Exchequer, in conjunction with that which he already held of First Lord of the Treasury. Strange to say,

this was done without considering at the time whether it would vacate his seat (by no means a safe one) or not. The law upon the subject was contained in two Statutes,[1] one of Queen Anne's reign, the other Mr. Disraeli's Reform Act of 1867. The earlier Act made the election of any member of the House of Commons void on his acceptance of any office of profit from the Crown, and directed a new writ to issue as if he were dead; enabling him to be re-elected. The Chancellorship of the Exchequer was certainly an office of profit under the Crown; and Mr. Gladstone drew half of its salary, in addition to that of First Lord of the Treasury. The later Act enumerated in a Schedule certain offices,—among them, those of Commissioner of the Treasury, and Chancellor of the Exchequer;—enacting that, when a person had been returned to Parliament after the acceptance of any one of those offices, his subsequent acceptance from the Crown of any other office or offices described in the same schedule, "*in lieu of and in immediate succession the one to the other*," should not vacate his seat. Gladstone received the seals of Chancellor of the Exchequer early in August, and neither then nor afterwards ceased to be First Lord of the Treasury; though, as usual in such cases, a new patent was issued, reconstituting the Treasury Board, with the omission of Lowe's name, and including Gladstone as Chancellor of the Exchequer.

My own impression was, that the seat for Greenwich was vacated: I could not see how, continuing

[1] 6 Anne, cap. 41, sect. 25; 30 & 31 Vict. cap. 102, sect. 52.

for every practical purpose to hold his former office, and now adding to it a new office (for which he also received pay), it could be said, that the one was "in lieu of," or "in succession to," the other. I told him so, before I knew what any one else thought, on the 20th of August, when he was at Balmoral. In reply, he sent me a copy of a letter which he had written to the Speaker; by which it appeared, that Sir George Jessel thought differently; and it was intended to obtain further advice. His own view (which he supposed to be Jessel's also) was, that when the new patent, reconstituting the Treasury Board, was issued, there was an end of the office of First Lord, which he held under the patent superseded by it; and that "in lieu of," and "in succession to" it, he took a new Commissionership, brought into existence by the new patent, in respect of which he again became First Lord; and that the office of Chancellor of the Exchequer was "attached by usage" to one of the Commissionerships of the Treasury;—so that the conditions of the Statute of 1867 were satisfied. He was under the impression that both Lowe and the Attorney-General (Coleridge) concurred in Sir George Jessel's opinion: and, later in the same month, he sent me a memorandum, drawn up by a permanent officer of the Treasury, in support of the same view.

In the meantime, the matter was undergoing public discussion: and I found that Lowe, who visited me during that autumn at Blackmoor, was far from being of Gladstone's mind; and that Cole-

ridge also must have been misunderstood. Coleridge wrote to me on the 6th of November, just after his nomination to be Chief-Justice of the Common Pleas, that he regarded the question as "very serious," and suggested that he should meet myself, Sir Henry James, and Mr. Bowen,[1] to consider it. And Lord Young, a most able lawyer, recently Gladstone's Lord-Advocate for Scotland, wrote anxiously from Edinburgh, expressing his opinion that the case could not be brought within the exceptions introduced by the Act of 1867 to the general rule: he thought the question "serious and alarming," and understood that it would certainly be raised when Parliament met.

I told Gladstone of these communications: it was for him to decide whether a meeting of myself and the Law Officers, as was suggested by Coleridge, should be held or not: he did not seem unwilling; but the matter never came to that point. It was allowed to stand over until the time for the meeting of Parliament drew near. It was at least sufficiently grave to require deliberate consideration from the House of Commons, and there was the risk of formidable penalties, if he sat and voted in the House when, in point of law, his seat was vacant. What was to be done? He was sensible of the difficulty (as he put it in writing to myself on the 19th of September), of either taking his seat in the usual manner at the opening of the Session, or letting the Address be

[1] Afterwards Sir Charles Bowen, later Lord Bowen.

voted, an amendment (perhaps vital to the Government) disposed of, and the necessary arrangements for business in the House of Commons made in the Prime Minister's absence. A dissolution was the only escape: and I have never doubted that this was the determining cause of the dissolution of January 1874.

Gladstone did not, upon the occasion of that appeal to the country, think it enough to rest his claim to public confidence upon the past acts and known principles of his Administration. In his Greenwich manifesto, addressed really to the whole kingdom, he took the unusual course of bidding for a new term of power by the promise of a new financial policy, undisclosed until then, even to the Cabinet;—the total repeal of the Income-Tax. It was not the first time that he had advocated it. When Sir George Lewis was Chancellor of the Exchequer, he condemned with extraordinary vehemence an innocent and commonplace budget, because it did not take off the Income-Tax. But during many years afterwards, while he was himself Chancellor of the Exchequer or Prime Minister, he made no such proposal; nor did he revert to it again, when, after a further lapse of six years, he was restored to power. An electioneering address from a Prime Minister, propounding by anticipation a popular budget, was a dangerous as well as new thing; that it should have been denounced by his adversaries was less surprising, than that it should have failed to produce the desired effect.

The elections went against us: Disraeli came into power with a large majority, for the first time during his adventurous political life: and on the 21st February the Great Seal passed again into the hands of Lord Cairns. Gladstone, wearied, —dissatisfied, I think, with his supporters, and having no party-watchword immediately available for an attack on his successors,—stood aside for a time; and Lord Hartington, at the request of a meeting of Liberal members of the House of Commons, accepted the post of leader, and bore the burden of its duties during the whole of that Parliament. Cardwell, to whom the place which Lord Hartington took might perhaps have been open, consulted me whether he should aspire to fill it, or accept the alternative, which was offered him when we left office, of going to the House of Lords. Both he and I agreed, that anything would be better for him than to play the part of Addington to Gladstone's Pitt. He, therefore, accepted a Peerage; giving me constant opportunities of communication with him during the remaining years of his public life, which was not so easy when we were in different Houses, and both occupied with departmental business.

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26 Marine Parade, Brighton,
11*th February* 1874.

My dear Lord Chancellor—I thank you very sincerely, I cannot tell you how much, for your kind note, and for the friendly and generous course you have taken about your Land

Bills. I should certainly propose to introduce the Bills either with, or without, modifications, and in that case the opportunity of considering them beforehand which you give me would be of incalculable advantage. The two points you particularly refer to, viz. the holding title, and the shortening the time of limitation, staggered me somewhat last session as to the length you proposed to go, but I have no prejudice about them, and will most candidly consider the reasons in their favour. I am somewhat surprised, and not a little disturbed, at the events of the last fortnight. My political sympathies are not, I believe, dull, and they have been exercised not disagreeably; but when personal consequences come to be thought of, I own I feel how much some years of comparative freedom unfit for sustained exertion, and how humble the consideration of the amount of work *you* have done may well make any one who undertakes to perform the same duties.

Perhaps you would, at some time, tell me how the Inns of Court received the Bill for altering their constitution which you proposed to them, and allow me to have a copy of the Bill. It is upon the lines of the Inns of Court that I have always hoped to see a Law University formed; and I carried, many years ago, a resolution to this effect at the Bench at Lincoln's Inn, which they afterwards rescinded.—Believe me, my dear Lord Chancellor, ever yours sincerely, CAIRNS.

5 CROMWELL HOUSES,
20th February 1874, 11 O'CLOCK P.M.

MY DEAR LORD CHANCELLOR—I was on the point of leaving town when Thesiger came to me from you yesterday, and I have only just returned, and find your note and further papers. I have to thank you extremely for the lucid and perfect order in which you hand me the threads of the leading transactions. In the office of L.C., in which there is no permanent Staff,[1] this is no small convenience, though I doubt if it has been usual for an outgoing Chancellor to be so thoughtful for his successor.—Believe me, yours, CAIRNS.

[1] There is now a permanent staff, see *post*, vol. ii. p. 156.

To the Hon. Sir Arthur Gordon

Blackmoor, *6th September* 1874.

This, you know, was to be a political letter about things in general. I must say that I agree with you in thinking that Gladstone cannot help exerting such an influence, and interfering in politics so much, as to make any other head of the Liberal party for the time impossible, unless he retires altogether, either from Parliament or from the House of Commons. And yet I think he is so thoroughly determined *not* to lead, or to return to office (on any terms which the party either can or will make practicable), as to offer extremely little chance of his giving up his wish for retirement, which is certainly genuine. So that, unless they entirely spoil their own game, the present people have really a much better chance of remaining in power for more than this one Parliament. I cannot say that they have as yet done much to gain the confidence of those who did not place confidence in them before; but they have this advantage (Disraeli being, in this respect, the very opposite of Gladstone), that their leader studies politics as an *art*, and is not carried away by zeal or enthusiasm for or against any person or any thing; and it appears to me that Disraeli, *quite as much* as Gladstone (of whom also this was true), *is himself the Government*, and not only its Head. The only one of his colleagues who seems to me to have strength enough, and judgment enough, to make him a real power in the Cabinet, is Cairns . . . Salisbury is too critical and contradictory, and between him and Disraeli there is mutual repulsion; all the rest are pawns. Lord Carnarvon I, of course, like, especially as a chief, for *you* to serve under: and in his department, I have no doubt, he will be popular and conscientious. . . . Hardy's abilities and influence are not of a kind to signify so much in office as in opposition, especially in such an office as the secretaryship for War, to which he is entirely new. But this very want of strength in the subordinate posts is favourable to the Cabinet holding together, unless Disraeli and Salisbury quarrel again outright (a thing which is always possible); and if it is not favourable to their *doing* much, I am far from sure that the country, in its present

Conservative temper, wants much to be done. One of the principal reasons for the late change was, that it was tired of heroic measures, and frightened at the prospect of what might be thought heroic in the future.

To turn to the other side. I cannot say that my opinion of Gladstone, as a statesman, has risen, with the opportunities I have had, since 1871, of observing him more closely; though my opinion of him *as a man* has certainly suffered nothing. For the *arts* of political management, he trusts too implicitly, I think, to whippers-in and other men inferior in political earnestness and insight to himself; and, with respect to the business of legislation and government, his mind seems to me to be too one-sided and vehement, and to want accuracy, equability, the sense of proportion, and breadth. He can hardly be brought to interest himself at all in matters (even when they are really great matters) in which he is not carried away by some too strong attraction; and, when he is carried away, he does not sympathise, or take counsel with, those whose point of view is at all different from his own. This makes it hardly possible for him to be Minister, except when it is the time for some "heroic" measures, for which he can excite public enthusiasm; at other times his mind is not a centre, round which other minds can revolve, or which so associates itself with the thoughts and interests of other men as to harmonise and regulate their action in the manner necessary for ordinary good government.

This character of his mind makes too many people afraid of his taking, whenever it is possible, a radical and revolutionary turn; and I confess it makes me myself doubtful whether such measures as "Disestablishment" in England and in Scotland, may not, as events tend to give them more importance in the constitution and action of our political parties, attract him to their side. His line, during last session, when ecclesiastical matters, both English and Scotch, came under discussion in Parliament, was by no means unlike that which he used to take on questions relating to the Irish Church, before its Disestablishment became a practical measure. It sounded very much like, "You must chose between the *status quo* without any attempt to alter it, either by lightening the strains upon its weak or sore points, or otherwise, and Disestablishment." This is a line with which I cannot agree. An

institution, which is so thoroughly out of gear that you cannot touch it without bringing it to the ground, is manifestly one which cannot be maintained; and its demolition, with those who take that view of it, can be nothing but a question of time. I do not think that Gladstone shares the visionary views of some Churchmen as to the freer course which Church principles would have in this country if the Church were *delivered* (in the language of the "Liberation" Society) from State control; but I suspect he has much sympathy with the Nonconformist idea, that the State should be absolutely neutral in matters of religion when the nation is not sufficiently united in religion to make the realisation of his own abstract ideas (those of his books, to which, I believe, he still adheres) about the Church as a "national organ" of a common religion, possible; and I have good reason to know that he has a just jealousy of any tendency to compromise, for the sake of State religion, in the direction of eclecticism, or of an abstract instead of definite and dogmatic Christianity, in which latter point I myself most heartily agree with him. But, upon the question of Establishment, my own conviction is, that the terms of it, as at present settled, are not too onerous to the consciences of those who believe in the Christian Church as a divine and not a secular Polity, and not too restrictive of the energy and freedom which are necessary for life and power in a Church, to be acquiesced in still, as they have been hitherto, and maintained and justified as sound in principle; and that the freedom of the Church, for good, would not really be increased by its overthrow; that the terms of Disestablishment, if effected in England, would be far more destructive than in Ireland, involving the loss of our cathedral and parish churches, as a rule (subject to exceptions, in favour of recent private benefactions), and excluding the power of commuting life interests on favourable terms, with a view to any permanent Church fund; that the moral effect of such a change would certainly be, for a long time, adverse to the influence of religion (the religion of the Church, at all events) among the people; and that its political consequences would be revolutionary as to all our ancient and distinctive political institutions. I think, too, that the strength of the Church of England, whether viewed on the religious or the political side, is so great, as to

make its destruction not only not inevitable, but hardly possible, but for the effect of internal dissensions; as to which, while I admit that, if the most powerful religious influences in the Church cannot reconcile themselves to the actual terms of the existing settlement, and to their *bonâ fide* observance and enforcement, the Institution cannot stand, I am myself more hopeful than some others that they may be kept within the limits necessary for self-preservation. On the whole, my own determination is to have nothing to do with Disestablishment; and if (as seems not improbable) this should hereafter become a *sine quâ non* of the co-operation of the extreme section of the (so-called) Liberal party, and if (which I trust is not probable) the Whigs (never friendly, as a party, to the Church, but at the same time preferring the policy of even excessive State control to that of a "free Church in a free State") should be found willing to surrender the Church for the sake of that co-operation, I could act with the party no longer. Before, however, things come to this point, it is probable that circumstances (such as may follow the removal of Disraeli, whenever it happens, from the political scene) will lead to a fusion of the moderates of both parties. Most of the members of the late Cabinet, and especially the stronger men among them, are really moderate, *e.g.* Lowe, Cardwell, Forster, Goschen. Of these, however, the two last have strong views in particular directions, which cause them to be regarded as less moderate than they are; and the two first, while they have no such views, are probably (as are Granville and Hartington also) thoroughly Whig in their ideas as to the Church. None of them seems, at present, to have any prospect of coming to the head, except Hartington; and if he were to do so (dividing the lead with Granville in the Upper House), it could only be as a matter of temporary convenience, and could not last long.

All this, of course, is in confidence, between ourselves only.—Ever yours affectionately, SELBORNE.

CHAPTER XVI

ECCLESIASTICAL LEGISLATION

1874

It was in the session of 1874 that a Bill for the suppression of Ritual Irregularities, which gave occasion to great difference of opinion in the Church, was introduced into the House of Lords by the Archbishop of Canterbury. It had the concurrence of most of the Bishops; though in its later stages some of them, particularly Bishops Moberly and Christopher Wordsworth, opposed it. Whatever might be thought of the wisdom of that measure, either as first proposed, or as afterwards altered, it seemed to me impossible to deny that there had been a considerable growth of innovations upon the Ritual authorised by the Book of Common Prayer not casual or sporadic, but systematic and with a tendency to increase, and of a nature dangerous to the order and security of the Church; and that it was equally difficult for the Bishops to repress them under the powers of the existing law, and to leave them uncontrolled without incurring great responsibility. Those who practised them were the extreme

wing or advanced guard of a large party, aiming at definite objects of Church reform in a Catholic direction (as they thought) or (as it appeared to others) of reaction towards mediæval doctrines and practices which the Church of England at the Reformation had deliberately set aside—a party which might have taken for its motto the saying of Richard Hurrell Froude, that "the Reformation was a limb badly set, and must be broken again in order to be righted."

After the secession of Newman and those who followed him to the Roman Catholic Church, a gradual transformation [1] of what remained of the Oxford or "Tractarian" school took place; a transformation with which I could not sympathise, as to a great extent I did with the original movement. This, in its practical developments, was much influenced by the Association called the "English Church Union." The spirit of its founders or original promoters was æsthetic and antiquarian; laying great stress upon the significance of Ritual forms and ceremonies, which had not been done (at least not in the same way, or to anything like the same extent) by Newman or his coadjutors; and tending to make some mediæval practices, which found no place in the authoritative standards of the Church of England, tests of Catholicity. I cannot help applying to this subject what James Mozley wrote upon another [2]:—"One sees how constantly a

[1] See *Memorials*, Part I. vol. i. pp. 396-399.

[2] *Letters of J. B. Mozley*, p. 316. (Rivingtons, 1885.)

point leaps to a Divine law, unless watched; and even the steady thinkers that watch it cannot stop the impetus."

Many good men attracted by the word "Union," and by their sense of the need of mutual support and sympathy were and are found in the ranks of that Association. But its tendency was not towards union; it was a disintegrating, not a cementing power. It was lay[1] and voluntary in its essential character; and it set itself by degrees, more and more, against all existing authority in the Church of England, whether of Courts, or of Bishops who followed the judgments of Courts; having itself no species of authority. The danger of such an *imperium in imperio*, and its fundamental inconsistency with Church principles, may have been the reason why such men as Sir John Patteson and Sir John Taylor Coleridge, having at one time joined, afterwards withdrew from it.

I took the same view even before it had given an impetus to Societies which present in an organic form unauthorised standards of belief and practice. I had never liked the Society system, even in those fields of action in which Churchmen of all ranks, and of all shades of opinion, accepted and made use of it. This new extension of it to doctrine, worship, and discipline, seemed to me to be an intrusion upon the Episcopal office, repugnant to the Catholic profession with which it was accompanied. My

[1] Its Presidents have always been laymen.

private taste and judgment agreed with those who preferred what was ancient, solemn, or significant in Ritual to what was modern, cold, or unmeaning; but neither antiquity, nor beauty, nor symbolism, could reconcile me to what was not lawful; and I knew no law as to such matters binding upon English Churchmen, or which they could rightly or safely follow, except that of their own branch of the Church, contained in the Book of Common Prayer. Nor could I separate, as to these things, the substance of law from the authority of judicial interpretation by the existing Judicatures, by which alone ecclesiastical causes were or could be determined. The principle laid down by Lord Hatherley (in an ecclesiastical judgment[1] which conceded to the extreme High Church party a large liberty of opinion) had my hearty assent. "If the minister be allowed to introduce at his own will variations in rites and ceremonies that seem to him to interpret the doctrine of the service in a particular direction, the service ceases to be what it was meant to be, common ground on which all Church people may meet." But the party whose liberty of opinion was affirmed by that Judgment claimed, as a consequence of it, to symbolise particular views of doctrine in their manner of performing the Eucharistic Office,—which of all others ought to be a bond of union,—and some of them habitually did so; persuading themselves, no doubt, that the practice and authority

[1] *Sheppard* v. *Bennett;* decided in December 1871. *Moore's Privy Council Reports;* New Series, vol. ix. p. 193.

of the Church of England before the Reformation was enough to justify them, whatever any court might determine as to its present law. It was out of excesses of this kind that the Archbishop of Canterbury's application to Parliament in 1874 for some improvement in the means of enforcing the law arose.

From first to last that business was mismanaged. The title, "*Public Worship Regulation Bill*," which was given to the measure by some inadvertence of which the importance was not perceived, was at once provocative of offence on the part of those who were jealous of parliamentary interference in matters spiritual, and essentially misleading; for the Bill did not regulate Public Worship at all, but dealt only with legal procedure for *enforcing* the Acts of Uniformity. In the course of its progress through the House of Lords it was suffered to fall into the hands of Lord Cairns and Lord Shaftesbury; excellent men, but in their religious views representing the lowest churchmanship of the Evangelical party. In the shape which they caused it to take, it introduced no substantial improvement into the administration of ecclesiastical law; doing nothing effectual to make it more expeditious, or less litigious and costly. Lord Cairns was by no means desirous of proceeding to extremities against all forms and degrees of what was popularly called Ritualism. He received with favour a proposal of Bishop Magee of Peterborough, to grant an amnesty for the past, and toleration for the future, upon some by no means

unimportant points, as to which the interpretation of the Rubrics was open to controversy. But it was soon seen, that it would be difficult to set limits to the principle of such concessions: one thing drew after it another, and when the thorny question of the use of the Athanasian Creed was brought forward, it became apparent, that any dispensation from this would be an alteration of the substance of the law of public worship by the authority of Parliament only; and that the party whose scruples it was the object of the Bishop of Peterborough and others to relieve would be still more opposed to the Bill, so modified, than they were before. So the attempt to relax the strictness of Rubrical law failed. And when, in the House of Commons, Mr. Disraeli went out of his way to exasperate the Ritualists, and all who were disposed to throw a shield over them, by describing the Bill (to which he gave his support) as having for its object to "stamp out Ritualism," he did more to destroy its chance of being useful for any good purpose, than could have been accomplished by the most violent opposition. For in the provisions of the Bill itself, as it left the House of Lords, there was nothing one-sided; it might, indeed, be more probable, from the attitude of the different parties in the Church towards each other at that time, that it would be used to restrain excess than to correct defect in Ritual; but it was equally available for either purpose, to those who might desire to compel obedience to the law. The occasion was not the same thing with the object; it was the interest of

its opponents, not of its advocates, to confound the two.

I endeavoured, when the Bill was in Committee in the House of Lords, to modify its character, by getting rid as far as possible of the litigious element, and giving the Bishops power, with or without complaint, and without the necessity of going into questions of fact, or dealing with any clergyman in the first instance as an offender against the law, to issue a monition (mandatory or prohibitory, as the case might be) upon any point relating to the manner of performing the services of the Church. Any clergyman of the diocese, receiving such a direction, might submit to it, or not. A limited time would have been allowed him for declaring that he did not admit its lawfulness; in which case he was not to be bound by it, until its lawfulness was judicially affirmed. To obtain, upon that point, a judicial determination, either he or the Bishop might apply in a summary way to the Provincial Court, with power of Appeal from that Court to the Queen in Council: and on any such application, costs (as a general rule) were not to be given. If, within the limited time, the clergyman made no objection, he was to be taken as submitting; and in that case he was to be bound by the Bishop's direction and indemnified for acting upon it, and liable to be proceeded against for disobedience to it, as long as the law was not otherwise declared by any Judgment of an ecclesiastical court of competent jurisdiction.

In proposing amendments for this purpose, I founded myself upon the principle of the direction in the Preface to the Book of Common Prayer, that in cases of doubt as to the manner of "understanding, doing, and executing the things contained in the Book," resort shall always be had to the Bishop of the diocese, who "by his discretion shall take order for the quieting and appeasing of the same"; with power, if the Bishop should be in doubt, to go to the Archbishop. I think, to this day, that, if what I suggested had been done, much of the evil which has since followed might have been avoided: and I see it stated,[1] in the biography of Archbishop Tait, that many persons were disappointed at its rejection. It did not, however, receive sufficient support, either from the Bishops or from any other quarter, to enable me to press it to a division. I should not have relinquished it so easily, if I could have counted on the help of my own political friends. But, on this class of subjects, they trusted Cairns more than myself; and Cardwell frankly told me so. Cairns took objections of a technical character, which, although in my judgment of no weight, were sufficient for them, as well as for his own side of the House. And most of the Bishops appeared to shrink from such an addition to their responsibilities, as might have resulted from giving them an initiative, with compulsory powers, for the purposes contemplated by the Preface to the Prayer-Book. Even of those who were favourable to the principle, some felt difficulty, unless the substance

[1] *Life of Abp. Tait*, vol. ii. p. 208.

of Ritual Law could be altered at the same time; which was not possible. Bishop Moberly was one of these. He wrote to me, that "personally he felt most thankful" for my amendments; but added, that, if the Court of Appeal would be bound to uphold a monition conformable to previous judgments of the Privy Council, "it would be imperative that the law of the Rubrics should be readjusted on a freer and more liberal basis, and that we should not go on for ever as if the settlements of the Reformation age were the unalterable and infallible decisions of the Church of England, needing henceforth nothing except legal interpretation of the words."

Having failed to induce the House of Lords to agree to what seemed to me a better way, I thought it my duty to acquiesce in that form of measure, which the Bishops who sought to have their hands strengthened were content to accept: and I took occasion of a letter which I received from Mr. Jelf,[1] expressing the anxiety which he and many others felt upon the subject, to explain my reasons, in a form to which he gave publicity, through the *Times*, with my consent. I wrote:—

I am sorry for the great uneasiness manifested by yourself and so many others of the clergy about the Archbishop's Bill; which makes me doubt whether, if it passes, more harm or good will be done. But, at the same time, I am unable to understand, or (at least) to reconcile with what I have been accustomed to think Church principles, the objections of principle made to it: and I cannot but anticipate very evil consequences, in the not

[1] Then Vicar of Blackmoor.

improbable event of the success of the opposition offered to it. The Bill,—I am not speaking of it as it would stand if the Bishop of Peterborough's amendments were adopted,—will, if it passes, be merely a measure for shortening and simplifying to a certain extent the legal procedure in a certain class of cases, now cognisable under the present cumbrous procedure of the ecclesiastical Courts. It creates no new offence, but is founded solely upon the ecclesiastical Law, as now contained in the Prayer-Book, Rubrics, and Canons, agreed to by the Convocations of the Church above two hundred years ago. The procedure which it proposes to alter, in the cases with which it deals, is one prescribed by a statute passed early in the present reign, upon the suggestion (as this would be) of the Bishops of the day. All such enactments as to procedure in ecclesiastical causes have from the Reformation downwards, been made by Parliament. They necessarily must be so made, from the very nature of coercive jurisdiction in an Established Church; and they have always, as far as I am aware, been made without its being thought necessary to consult the Convocations of the clergy about them. There is no doubt, both on general principles and according to the best constitutional precedents, that alterations in the Articles or Liturgy, etc., ought not to be attempted without the concurrence of the Synods of the Church: but (as I have said publicly) I am not aware that a right to be consulted on questions concerning only the legal methods of enforcing the ecclesiastical law has ever before been claimed on behalf of Convocation: and, if so, such a claim cannot now be admitted consistently with the existing settlement of the relations between Church and State, described by the word "Establishment." How, therefore, any part of the substance of Church discipline, or of the rights of the clergy, can be affected by the proposed legislation, is not to me apparent; unless indeed it is contended, that the clergy have a vested interest in the continuance of formal and technical impediments to the execution of the laws of the Church. If that is meant, it is a proposition to which I am unable, either as a citizen or as a Churchman, to agree. I must honestly say, that there is something repugnant to my sense, even of morality, in a claim on the part of a large body of the clergy to be at liberty to disregard at their discretion the

laws of the Church, especially in matters which, unlike questions of faith and morals, are *juris positivi*. I have been always used to think that the principles as to Church order and organisation and Episcopal authority, inculcated in (*e.g.*) the Epistles of Ignatius, were Catholic: but, if so, what is to be thought of the Catholicity of a party which, for the sake of having its own way in matters of form and ceremony, sets those principles aside, and (at least by its popular organs) pours contempt upon them? You think that the Bishops may perhaps have been too much influenced by certain secular newspapers. But do none of the clergy, and of the laymen whose minds upon ecclesiastical questions have been formed by them, give their countenance to other newspapers, the spirit and tone of which savours at least as much of those things which Christians renounce at their baptism?

I should have supposed that, if anything were clear, these propositions were so: first, that the regulation of rites and ceremonies in the Church, and the interpretation of the laws of the Church relating to them, belong to public authority, and not to private judgment; and, secondly, that deviations from the law of the Church as to such matters, whether by way of defect or of excess, which may be excusable and innocent by the plea of custom, or of the honest exercise of private judgment, cease to be innocent or excusable when they are unequivocally forbidden by that authority. Nor am I able to understand how, without strange self-deceit, any men can acknowledge these truths with their lips, and yet refuse to act upon them, because (as it would seem) the whole working system of ecclesiastical law and public authority, under which they actually live, is in some way contrary to their notions of what ecclesiastical law and public authority ought to be, and is (therefore) dispensed with by their private judgment, as not binding on their consciences. The necessary consequence of allowing such a claim of ritual independence by individual clergymen is to let in a flood of unlimited license, in the directions both of Latitudinarianism and of Romanism—Romanism itself, in a Church whose position can only be justified if Romanism is wrong, being a form, and not the least mischievous form, of Latitudinarianism. By whatever real zeal or piety, either in teachers or in disciples,

such license may be for a time accompanied, its tendency is disorganising and destructive.

What are the arguments against now interfering to stop ritual excesses? First, that they ought not to be restrained, unless at the same time other evils in the Church, to which as yet no adequate remedy has been applied, are corrected. But this is the old "*Rusticus expectat dum defluat amnis.*"[1] Is it worthy of men who profess high doctrine and practice to plead the inefficiency of the restraints applied to other men's faults as a reason why they should be indulged with impunity in their own? Next, it is said that some parts of the law in question are uncertain, and others obsolete, and that the law ought to be revised and altered before it is enforced. But there never has been, and probably there never will be, any considerable body of law, in which there are not some things uncertain, and some obsolete. This, however, creates no real practical difficulty in the administration of the law. What is obsolete is not enforced, and what is uncertain becomes certain when it is authoritatively interpreted. Those parts of the law which are disputable, in liturgical as well as other matters, bear no real proportion to those which are clear enough for all men to understand and obey them, if only they have the will. And it seems extravagant that, because there are some points in which the law might advantageously be altered (and some difficulty in altering it), therefore we are to go on as if we were under no law at all. Here, again, the only party whose objects this line of argument really tends to promote is the latitudinarian. They would, doubtless, be well enough pleased to see a general revision of the Liturgy attempted in England, such as (since disestablishment) has been going on in Ireland. But I have not so entirely unlearnt the old sort of Churchmanship, as to be willing to help them towards the attainment of that object.

With respect to your own feeling, that there is too much distance between the Bishops and their clergy, I would content myself with calling in question its relevancy for the present purpose. Assuming the fact to be so—whether the cause may

[1] "Waits, like a rustic, for a river to run down" (Horat. *Epist.* Lib. i. Ep. 2, v. 42).

be the great size of dioceses, the mode of appointing bishops, or anything else—our system of Church government is, after all, Episcopal, and not Presbyterian or Congregational; and I do not see how it can be right to resist the lawful authority of Bishops, appointed under the actual law and order of the Church, because there may not be as much as we might desire of that kind of intercourse between them and their clergy which would reduce the frequency of occasions for authoritative interference. This brings me to your suggestion, that the Bishops should deal with ritual questions in a council of (say) twelve Presbyters of the diocese. Whether this might be a possible and desirable arrangement or not, it is difficult for me to judge; because we never know all the reasons for or against a particular proposition, till it has become the subject of public discussion. I do not, however, think that it would be possible for any questions of law to be conclusively determined in that way. The Archbishop's Bill has gone beyond the stage at which any such scheme could have been proposed by way of amendment to it; if it were now proposed, I am sure it would receive no favour, either from the supporters or from the opponents of the Bill. In principle, I know no reason why the executive authority of the Bishop should be controlled, or that of ecclesiastical Judges superseded, by such a Council; nor do I know whether there are any precedents for it, in the history of our own or of other Churches. And, since all coercive laws must necessarily be made for the disobedient, and not for the obedient, I cannot say that I think it at all probable, that those who hold themselves under no obligation to obey either the extra-judicial advice or admonition of their Bishop, or the judicial authority of any Court, when opposed to their own practice and judgment, would be more likely to submit themselves to the advice, or to the exercise of authority under an Act of Parliament, of a Bishop assisted by twelve or any other number of Presbyters.

This letter elicited warm expressions of agreement and approval from several of my friends, and was also approved (as I have since learned from his published correspondence), by an eminent man, of

great force and independence of mind, James Mozley, then Regius Professor of Divinity at Oxford.[1]

What a kettle of fish this Archbishop's Bill is! In its present shape, I do not see any particular harm in it, or any very striking advantage either. Whatever could have given the Bishops any unfair power seems to have been taken out of the Bill. Roundell Palmer has come out in a manner that suits him—honest and straightforward. I could not but sympathise with his letter, which seemed to me substantially true.

The communications which reached me were, of course, not all of one kind. I received some from ardent and impatient spirits on the Ritualist side; and others, equally dissatisfied, from men of greater weight, and more sobriety of judgment. Canon Carter, one of the best representatives of the advanced Ritualistic school, used their common arguments; and Augustus Duncombe, Dean of York, whose views were less extreme, thought that the Archbishop's Bill would encroach upon the rights of private judgment, and might narrow the tolerant comprehensiveness of the Church of England. Mr. Edward Rose of Weybridge, of whom I always had the highest opinion, and who did not identify himself with any party (his sympathies being divided between the "Broad" and the "High-Church" schools), took the ground, afterwards insisted upon by Mr. Gladstone in

[1] To the Rev. Frank Faber. *Letters of the Rev. J. B. Mozley* (Rivingtons, 1885), p. 338. The date of the letter, as there given, is January 1875, which cannot be correct: it ought, doubtless, to be July 1874.

the House of Commons, that a "rigid uniformity," and "an exact obedience to the Rubrics"—obsolete or not—was not for the good of the Church. He thought the clergy morally justified in assuming, "within due limits," to exercise a discretion as to obeying or disobeying the laws of the Church on matters of positive regulation; considering, that such positive regulations could not be equally applicable to all cases, and that strict obedience must often bow to expediency. The Courts, he said, must have a discretion to leave some questions of that kind open; yet they could hardly do so, without the appearance of partiality and unfairness; from which his conclusion seemed to be, that such questions ought not to go before courts of law at all. He did not think it necessary to attempt to reconcile these views with the law under which we lived, contained in the Acts of Uniformity; nor did he suggest how, or by what authority, the line implied in the words, "within due limits," was to be drawn.

Mr. Gladstone came up from the country to oppose the Bill. I had a long talk with him about it; we did not agree. He may have been, and later events tended to show that he was, right in his practical view of the situation; but I was unable to discover any possible way of working out his distinctions. In the debate on the Second Reading in the House of Commons, he said, that he "had never for forty years approached any question with more embarrassment and perplexity." Ritualism was a term of shifting meaning; much liberty had been

permitted, and customs had grown up, which ought not to be rooted out, even if they were not in conformity with law. The enforcement of invariable, strict, and absolute obedience to Rubrics was "exactly the one thing that ought not to be done. . . . Not literal uniformity, but honest and general obedience, was desirable." He gave notice that in a later stage he would move six Resolutions, which, finding the sense of the House against him (he had then no more strenuous and outspoken antagonist than Sir William Harcourt) he did not actually move; but the Resolutions, which were of a remarkable character, remain on record. The last of them was formal; the other five were:—

1. That the House "could not do otherwise than take into view the lapse of more than two centuries since the Book of Common Prayer was enacted; the multitude of particulars embraced in the conduct of Divine service under its provisions; the doubts occasionally attaching to their interpretation, and the number of points they were thought to leave undecided; the diversities of local custom which, under these circumstances, had long prevailed, and the unreasonableness of proscribing all varieties of opinion and usage among the many thousands of congregations of the Church disseminated through the land."

2. That the House "would be reluctant to place in the hands of every single Bishop, on the motion of one or three persons, greatly increased facilities towards procuring an absolute ruling of many points hitherto left open and reasonably allowing of diversity, and so towards the establishment of an inflexible rule of uniformity throughout the land, to the prejudice, in matters indifferent, of the liberty now practically existing."

3. That the House, "willingly acknowledging the great and exemplary devotion of the clergy in general to their sacred calling, would not be on that account the less disposed to guard

against the indiscretion or thirst for power, or other fault, of individuals."

4. That it would, "therefore, be willing to lend its best assistance to any measure recommended by adequate authority, with a view to provide more effectual securities against any neglect of or departure from strict law, which might give evidence of a design to alter, without the consent of the nation, the spirit or substance of the Established Religion."

5. That it was "also desirable that the members of the Church having a legitimate interest in her services should receive ample protection (which did not appear to be provided by the Bill) against precipitate and arbitrary changes of established custom by the sole will of the clergyman, and against the wishes locally prevalent among them."

The Bill passed, notwithstanding these (to minds like my own) perplexing objections. Its effect in practice has been to justify the foresight of those who opposed, rather than of those who supported it; for it added fuel to the fire which it was meant to quench. Those who would not obey other laws have not obeyed this; and the measures taken to compel obedience to it in particular cases have not received that support from opinion, either lay or clerical, which would have been necessary to make them useful. One of the things which the Act did was to create a new Judge, with a right of succession to the offices of Dean of Arches and Official Principal of York; so providing against diversity of decisions in the two Provinces. Mr. Gladstone would have encouraged me, if asked, to undertake that office; but my judgment (so I wrote to my wife) was altogether against it. "Whatever might be my real disposition and power to judge impartially in these matters,

the clergy who have opposed the Bill would be certain, in their present temper, to impute to me partiality, on account of the line I thought it right to take in supporting it, and also on account of opinions given by me professionally when at the Bar, or which I might otherwise be known to entertain."

For the reasons so stated I declined the overture made to me through Mr. Gladstone. I did not then foresee the obloquy which has been heaped upon the learned person who became Judge under the Act, and his Court, by way of protest against his official existence.[1] Enough, however, has since happened, in that and other ways, to make me sure that, if I had accepted the office, I should have consulted neither my own ease, nor the public good.

[1] See *Life of Dr. Pusey*, vol. iv. pp. 284-286.

CHAPTER XVII

TENDENCIES TO DISESTABLISHMENT—WELLS—HAWARDEN—WALMER—THE MERCERS' COMPANY—THE SECOND OXFORD UNIVERSITY COMMISSION.

1874–1876

After the end of the session of 1874 I had an interval of comparative rest from public affairs (apart from the ordinary work of Appeals), which continued till 1876, unbroken except by those questions arising out of the Judicature Act, which have been mentioned in a former chapter.

This period was not without anxieties. Mr. Gladstone was excited to fever-heat, and was issuing his ardent pamphlets against "Vaticanism"; and the attitude and temper of his mind towards the Churches of Great Britain seemed to be in process of change. I had received from him, on the 4th of June 1874, when the Duke of Richmond's Scotch "Church Patronage Bill" was before the House of Lords, a letter showing great and (as I thought) not reasonable impatience of any action by the Legislature upon Church questions of any kind. The Duke of Richmond's Bill had no other

intention (and it has had no other operation) than to concede to the Established Church of Scotland a control over the appointment of its parochial ministers, which was in accordance with the principles of that Church, and had been strenuously contended for by the Free Church seceders of 1843: putting an end to Crown and other lay patronage, upon moderate terms of compensation, with the assent, generally, of the patrons. Dr. Rainy, one of the leaders in the Assembly of the Free Church, sent to Mr. Gladstone a long criticism of the phraseology of a clause in this Bill, which he thought wanting in distinctness, and to the authors of which he did not give credit for sincerity; suggesting that his letter should be put into my hands. Gladstone sent it to me, and at the same time recommended "that very remarkable measure" to my attention; and stated his impression that, if passed, it would lead to a movement for Disestablishment in Scotland, more serious than any that had been known there, and likely to spread its influence into England. Dr. Rainy's letter did not impress me; I thought his criticisms captious; and he avowed that, even if what he considered obscure in the Bill were made clear in a sense accordant with his own principles, "little or nothing" would be done "to remove the inequitableness of the measure, as relating to the position and history of the Free Church: that "inequitableness" being the concession to the Established Church, in 1874, of what, if conceded in 1843, might have prevented the secession which brought the Free Church into

existence. This, I have no doubt, was the view of the matter which affected Gladstone's mind. But to me, the proposition that, by the refusal or neglect of Parliament in 1843 to do anything which might have removed the causes of that schism, the Free Church had acquired a vested interest in the continuance of a system of patronage regarded by the seceders as wrong in principle, and by those who had borne it without secession as an encroachment by State Legislation injurious to their Church,— this proposition seemed to me destitute of reasonableness or justice. On the same principle, Nonconformists in England, whose forefathers seceded from the Church of England rather than comply with the Act of Uniformity of 1662, might complain of any relaxation of the Uniformity required by that Act, as "inequitable," with reference to their own position and history. Yet Mr. Gladstone's main argument against the Archbishop of Canterbury's Bill had been, that such relaxation was in practice necessary and legitimate. I could not reconcile with each other the movements, on those questions, of that extraordinary mind — the only direction in which they seemed to converge was that of Disestablishment.

It must have been in answer to some expression of the uneasiness which I felt at these indications of the state of Gladstone's mind, that Arthur Gordon, fresh from Hawarden, wrote to me on the 17th of November 1874 :—

> And now for my visit to Hawarden. I found Gladstone in the midst of his pamphlet. . . . It is curious, how little in

many ways age and responsibility have altered him. The impetuous publication of this pamphlet, without counsel and in spite of entreaty, is in almost every detail the history of the publication of the Neapolitan letters over again; and yet the consequences which attended his impatience of delay in that case might have made most men pause. I found him quite unable to talk or think of anything except religious or ecclesiastical questions. . . . I don't think he is *quite* so determined not to take office again, as he was. He consented to contemplate the possibility of his being once more Prime Minister. He spoke very strongly as to last year's ecclesiastical legislation. Till then, he had (he said) regarded Disestablishment as a disordered dream; — it had, he thought, been rendered less "nebulous" by it. The thing I most disliked, and remarked with most apprehension, in relation to this subject, was that he had been contemplating the difficulties, "the almost insuperable" difficulties, of such a measure, in a *practical* light; saying, *e.g.*, that the compensation to private patrons could be hardly less than £13,000,000. When, too, I told him that Disestablishment could never become a practical question in our day, unless brought forward by him, I observed that he did not affect to deny it: nor did he answer, "Then it will never come in our day."

These things were in my mind, when I was called upon to speak of the duties of the Liberal party at a public dinner in Winchester, given to my friend and neighbour Mr. Bonham Carter,[1] by his late constituents, on the 5th of December 1874.

The Liberals (I said) should be patient, if they were true men, Liberal in the true sense of the word; if they had regard more for the interests of the country than for their own interest as individuals, or the interests even of Party. It was better they should have no hold upon office, than that they should ever hold office upon unworthy or dishonourable terms. It was far

[1] For many years M.P. for Winchester, and at one time Chairman of Committees in the House of Commons.

better that they should remain, for I cared not how long, in what was sometimes called the cold shade of Opposition, than that they should compromise a single principle, or give their adherence dishonestly to a single demand for change which their own deliberate convictions did not justify. . . . The anxious wish of all good Liberals should be to avoid anything that could lead to a conversion of Liberals into Tories. To "prove all things," but "hold fast that which is good," should be the motto of true Liberals.

In consequence of this speech, Sir Robert Anstruther, member for Fife, wrote to me on 14th of December:—

I was much struck with your remark last week at Winchester, that the Liberal party ought to be now especially careful not to do anything that would convert men into Tories. I wish that you would kindly impress this upon our leaders. I am much vexed to see, that Adam,[1] in Scotland, has given his adhesion to the Disestablishment crusade that has been lately started in that country. The movement was in a fair way to cut its own throat, partly by the narrow bitterness that characterised the speeches made at the meetings, partly from the entire absence of anything like influential support. Adam can hardly have ventured upon supporting it without Mr. Gladstone's assent; and it appears to me, that it must have the effect of very materially widening and increasing the differences that have ruined our party.

The Duke of Argyll wrote upon the same subject:

I don't suppose that Mr. Gladstone has come to any formal resolution to "go in for" Disestablishment,—certainly not in England; though I suspect he is quite ready, so far as Scotland is concerned. The campaign opened in Scotland is, of course and avowedly, a campaign against all Establishments, attacking the one they think the weakest. But how

[1] The Rt. Hon. W. P. Adam; then Liberal "*Whip*"—afterwards Governor of Madras, where he died.

far Gladstone is ready to support the policy as regards England, I cannot say. I think I told you, that he wrote to me weeks ago, that the two measures passed last session by a Conservative Government had advanced Disestablishment, or brought it nearer, "by at least ten years, out of what number I cannot estimate,"—or words to that effect. But this is a sort of thing that might be said by any one. Gladstone's temptation to a Disestablishment policy is his dislike of the sort of legislation to which the Church would be exposed by a "Liberal" Parliament; the sort of thing that was threatened last session against the Scotch Church, in the "Liberal" amendment, making ratepayers the constituency for the choice of clergy. And with the feeling of aversion from this sort of thing, I suppose both you and I would sympathise. But you see the result of this, as affecting tendencies of feeling. It makes the policy of Disestablishment the best card to play, *both* for the leadership of the Liberal party in politics, *and* for the resistance of liberalism in ecclesiastical affairs. When so many currents are all found running into one main stream, that stream is clearly destined to become a great river. For my own part, there are many conditions of society which would make me desire Disestablishment. But it is enough to say, that they have not yet come; and that, in the meantime, we ought to do what we can to prevent them coming. I don't think Gladstone can be said to owe it to his former colleagues, *as yet*, to make any declaration on the subject,—unless indeed he has made up his own mind as to a practical course. But we are all free to take our own line; and I will not now consider myself under Gladstone's leadership, especially in ecclesiastical matters. It is very unselfish of me to feel that I almost regret your coming to the Lords, because you would have had so much more power in the Commons to resist tendencies, such as I refer to.

The tendencies of which the Duke spoke might perhaps have found an early development, if the conjunction of political with ecclesiastical impulses which he foresaw had not been retarded by other events. But, as time went on, the foreign policy of

Disraeli's Government opened to Gladstone another line of attack, into which he threw all his energies, and by means of which he regained power. Nothing happened during the rest of the time that we were in Opposition to confirm my fears; my uneasiness gradually subsided, and my normal state of confidence in Gladstone returned.

To the Hon. Sir Arthur Gordon

Blackmoor, Petersfield,
11*th January* 1875.

. . . I have been spending ten days, since I saw you, in the North of Ireland; from whence I returned last Saturday. That part of the country seems to be prosperous in all ways; and the reports which I heard of the results of Gladstone's measures, (even from men of different politics), were, in almost all respects, satisfactory. But I suppose, at this moment, no one could be more unpopular there—the Tories hating him for his Liberalism, and the Roman Catholics for his pamphlet.—Ever yours affectionately, Selborne.

To Lady Sophia Palmer

28*th November* 1895.

I met your Father at Glenarm after he had left office in 1874. Antrim asked him if he would like to attend Quarter Sessions in the village; he wished to go incognito, and I was deputed to take him there. We took up a humble position in the Court House, but the Head of the Constabulary recognised Lord Selborne and told Antrim, who was in the Chair, and who was then obliged to offer us seats on the Bench, and to introduce Lord Selborne to the other magistrates. Business then proceeded, but before each decision the magistrates, who were paralysed with fright at the presence of so great a man, asked your Father if he approved? He gravely replied, "I am not a

magistrate of the County of Antrim," and then gave a sly look at me! There was considerable disorder in the Court as, Irish-like, every one tried to talk at once. Lord Selborne was immensely amused at the whole scene; and when Antrim asked him, in the evening, whether he thought that justice had been administered, he said, "Substantially *yes*, but it was arrived at by rather peculiar methods!" . . .—Yours affectionately,

EDWARD C. GREY.

TO THE HON. SIR ARTHUR GORDON

10*th February* 1875.

. . . Reluctance to sever the tie between a long life of activity and the rest of one's time on earth is natural to all men, and not least to the best and most useful men. I admit that it is an infirmity, and that it must be painful to those who see the necessity before it is seen by him whom they love and honour: but it is an infirmity so connected with the highest qualities, as to be entitled to great allowance.

Whatever may be said of Gladstone's retirement from the first place in politics, at least it saves him from ever being placed in *that* kind of difficulty. But the sequel can only show (however thoroughly sincere it may be, as beyond all question it is, at the present time) whether that is a real and final retirement. For my own part, I think his decision has been right and wise, looking to the circumstances of the time, and the state of his mind upon some critical questions, even so far as that is known to one who, like myself, cannot boast of being in his intimate confidence: and, for the same reasons, I can thoroughly understand, that a "mountain has been taken off his shoulders." Whatever other mountains he may choose to put upon them again, it will be more easy for him to move freely, and with a safe conscience, under these self-imposed burdens, than if he were still tied down to the earth, like Gulliver, by a thousand bands of party Lilliputians, at every muscle and nerve;—not to say, exposed to the temptation (which would be a real one to less virtuous men, though perhaps not so to him) of accepting the homage, and doing the work, of powerful combinations of men, whose objects are not the same as his own.

I shall never cease to regret, that the occupations of my profession prevented me, while it might still have been possible, from ever attaining to that degree of intimacy with him, which any persons (sympathising with him *au fond*), who could go often to his Thursday breakfasts, etc., had the opportunity of cultivating. Few greater men, and none better have ever governed this country.—Ever yours affectionately, SELBORNE.

In January 1875 I was elected a member of the Governing Body of Winchester College; a position which, though it had great attractions for me, I had been obliged to decline before, on account of my public engagements. Lord Eversley then retired from its Chairmanship, and I succeeded him.

When Parliament rose in August of that year, I went with three of our children to Scotland. At Drummond Castle, on the 4th of September, I heard of the birth of our first grandchild. My wife wrote:—"It would be impossible to describe the sensation the little woman has made in our home world. She fills our hearts and thoughts so completely, that we know not what else to speak of."

TO THE HON. SIR ARTHUR GORDON

BLACKMOOR, PETERSFIELD, *3rd October* 1875.

. . . Several interesting things have happened to me;—first and foremost, the birth of a dear little grand-daughter, which took place on the 3rd of last month: and she has been to-day christened, by the names of "Mary Wilfreda." Another event has been the repetition, very agreeably, of my last year's visit to Haddo. We met there many members of

your own and Lady Aberdeen's families. . . . We all learnt to be very fond of the Major and Lady Grizel, and I was very glad to see a good deal of your brother. There is also something very interesting to me, at all times, in Lady Aberdeen; and I like very much the way in which your nephew does his part. His sister, Lady Katherine, is so universal a favourite, that I need not say anything about her. We had been at Mr. Ellice's, in Glengarry, before we went to Drummond Castle. They were all pleasant visits; and the scenery of Glengarry and Strathearn is very fine: but there is no place in Scotland the associations of which have so great an attraction for me as those of Haddo: nor is it easy to find anywhere a family with whom one can so entirely sympathise, even if not always taking quite the same view of every important subject.

Politics continue in the same state of lassitude and suspense as when you left: and it is difficult not to be infected one's self by the pervading torpor. The only two subjects, which seem likely to stir men's minds in the future, are Parliamentary Reform and Church Disestablishment. As to the former, there is very little reality in the movement towards it, so far as *opinion* is concerned; but it seems to be the inevitable fate of the Liberal party to be always calling out for new Reform Bills; and practical men persuade themselves, that what so many Liberals call out for has become practically necessary; and visionary men seem to think that, if you give the franchise to the agricultural labourer, the territorial interest will be extinguished, and a more equal distribution made of the good things of this life. The result of all which is, that changes which (as far as I can see) are neither necessary, nor are really likely to do anybody any good, will probably be made, at the risk of increasing the already formidable weakness of government in this country, and the already too great antagonism of class interests, as soon as ever the situation of parties makes the temptation too strong for our statesmen to resist. As for Disestablishment, there is an apparent lull at present: but I have no doubt its advocates expect soon to have enough control over the Liberal party to prevent any Liberal Government being formed who will not accept it, under any circumstances. On

both questions, the attitude of Gladstone remains as it was;—his last article on Ritualism (containing, as his first did, much that was very good) seemed to me, as its practical results, to put the maintenance of the Church as it is upon conditions very unlikely to be realised: and, if I am right in this, I should fear he will say, when he sees that these conditions are impracticable, that he can no longer resist. I hope, however, to pay him a visit in the course of this autumn; when I shall perhaps learn something more definite about the state of his mind on this point.—Believe me, ever most affectionately yours,

SELBORNE.

After returning from Scotland, I went to Wells, to sit as Assessor to the Bishop, Lord Arthur Hervey, in his capacity of Visitor of the Cathedral, upon a question as to the rights of the Vicars Choral of that Church. My wife accompanied me, and the Bishop devoted a day to driving us among the Mendip Hills, and through the Cheddar cliffs, perhaps the finest rock-scenery in England. We had seen Glastonbury before; but this was my first opportunity of seeing thoroughly Wells, and its unique collection of ecclesiastical buildings,—not (like so many others) either modernised, or in ruins. The principal part of the estates remaining to the Waldegrave family lay in that neighbourhood; and it was also a pleasure to my wife to revisit Harptree Court, in which her parents had lived during her childhood; though the house, now in the hands of strangers, had nothing but that association to recommend it. And I was not less pleased to see in his Deanery, surrounded by his family, my old tutor George Johnson, with whom I, in company with Archbishop Tait and others,

on various occasions, and, when necessary, to vindicate the Company's rights. It was in the course of those years, that the scheme for the formation of a Technical Institute by the City and Guilds of London was initiated and brought into operation. I supported it warmly, and have ever since taken as active a part in it as my other engagements have allowed.

In August 1876 I went officially upon a visit to the Company's estate in the county of Londonderry, upon the left bank of the River Bann: the time having arrived, according to the system of management upon which they acted, for a general revaluation and revision of rents. Several of the City Companies had, from the early part of the seventeenth century, possessed valuable estates in the North of Ireland: they were generally thought to have been wisely and liberally managed: those of the Drapers' and the Mercers' Companies were (I believe) the largest and best managed of all. The Mercers' Company had been in the habit of expending large sums upon their Irish estate in local subscriptions and improvements, and desired to deal justly with all their tenants; but in a time of apparent prosperity, and after a long period of low rents, they were advised that a considerable increase in the total rental distributed so as not to press hardly upon any one, might fairly be made. It was their custom to send a deputation every year to visit the estate; and upon myself and my colleagues in that year fell the difficult duty of endeavouring to come to a settlement with the tenants as to their

future rents. Our headquarters were at Kilrea, a small but thriving town, built entirely upon the Company's property, where they had a resident agent.

I then learnt more than I had known before of the relations between the owners and occupiers of land in Ireland, the friction arising out of them, and the dangers of agrarian agitation, even among the settlers of Scotch origin in Ulster. The disturbance of those relations, consequent on the conversion[1] of the Ulster customs into legal rights, was disagreeably manifest. A disposition was growing up to look upon any substantial increase of rents, under whatever circumstances, as an encroachment on those rights. The negotiations with our tenantry were conducted amicably; but we were not able, while upon the spot, to bring them to a point. We heard patiently, and gave full consideration to, their objections, with the result that we offered a large abatement all round of the new rents which our valuers had proposed. This I announced at a dinner which we gave to the tenants, and which passed off with mutual demonstrations of goodwill. But, though we desired to act liberally, they were not satisfied; and no settlement was arrived at till some time afterwards, and then not without further reductions.

TO THE MASTER OF THE MERCERS' COMPANY

30 PORTLAND PLACE, *5th December* 1885.

If I repeat, in a letter to yourself, some things which I said at the meeting of the Council of the City and Guilds Institute of

[1] By the Act of 1870.

on various occasions, and, when necessary, to vindicate the Company's rights. It was in the course of those years, that the scheme for the formation of a Technical Institute by the City and Guilds of London was initiated and brought into operation. I supported it warmly, and have ever since taken as active a part in it as my other engagements have allowed.

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To the Master of the Mercers' Company

30 Portland Place, *5th December* 1885.

If I repeat, in a letter to yourself, some things which I said at the meeting of the Council of the City and Guilds Institute of

[1] By the Act of 1870.

Technical Education yesterday, I feel sure that you will hold me excused.

I am very sensible that it is for the Companies, and not for me, to judge of the comparative claims upon their liberality of different objects, and of their means of meeting those claims; I am also very grateful to them for what they have already done in this cause. But the fact that they have done so much assures me that they will not be disposed to let the work which they have begun languish and fail of the success which it might otherwise attain for want of further efforts, and I cannot think they will be discouraged, because that success must necessarily be gradual. Its results in several of its branches (I may mention particularly the Finsbury College and the Technological Examinations) have already been remarkable and most encouraging. In the Central Institution, to which will belong the work, indispensable to everything else, of educating the future instructors of our intelligent artisans throughout the kingdom, the development of the results of the large original expenditure, which was unavoidably necessary, cannot possibly be immediate; but I am confident that it will not be slow in following, when the quality of the teaching to be obtained there is generally known.

There are some undertakings to which it is sufficient to give temporary or occasional support; others are of a greater and more permanent character, and require efforts corresponding to their nature and importance. Whether I look to the special wants of our country at the present time, or to the special position, history, and opportunities of the Corporation and Guilds of the City of London, I am persuaded that the Corporation and Guilds have never undertaken, and could not possibly undertake, a work more useful or more worthy of themselves than this. As a member of the Mercers' Company, I have rejoiced to see them associated with it, and to be able myself to take a prominent part in it. The name which it bears ought, I think, to stimulate us all to make it worthy of that name. And I am very confident that, if what has been so well begun is worthily completed and developed, by a continuance of the same wise liberality and public spirit by which it has been brought to its present stage of progress, the Corporation and Guilds will have established for themselves a lasting and imperishable title to be held in honour,

not by this generation only, but by all posterity.—Believe me, my dear Master, yours faithfully, SELBORNE.

The Worshipful
The Master of the Mercers' Company, etc.

In 1876 two friends of old days passed away—Francis Atkinson Faber and Sir John Taylor Coleridge.

Sir John Taylor Coleridge was already on the Bench in 1843, when I first knew him. From that time he treated me with unvarying kindness, and followed with interest every step in my life. He was equally excellent as a Judge, a Churchman, and a man of letters; candid, fair, and just; as close and as trusted a friend of Arnold, from whom in many things he differed, as of Keble, with whom he generally agreed. His affections were strong, his character equable, his bearing towards other men, young as well as old, modest, considerate, and sincere. He lived to a great age, nearly eighty-six; happy in himself and his children. Mr. Edward Coleridge of Eton, to whom (as he said) Sir John Taylor Coleridge had been "a second father, as well as an elder brother," wishing to place a brass to his memory in Eton College Chapel, chose me to write the Latin inscription for it.

In 1876 I accepted, at Lord Salisbury's instance, the Chairmanship of the second Oxford University Commission, appointed by a statute passed in that year, This, as it proved, was a laborious office: it occupied

a large share of my time for more than three years, during which the Commissioners made two prolonged visits to Oxford. The work was not finished, when, in consequence of the change of Government in 1880, I was obliged to retire from it, and was succeeded as Chairman by Mountague Bernard.

In accepting that office, I did not act inconsistently with the view of my duty which I took before the legislation of 1854. To make alterations in the Founders' Statutes was one thing: to revise those made instead of them under parliamentary authority, was another.

There was also another difference between the situation in 1876 and that in 1854. The reforming party in Oxford, which promoted the earlier measure, though powerful in ability, was small in number, and had to rely, against the Conservative forces then prevailing in the University, upon political influence outside. The measure of 1876 was due to pressure from within, in which the main body of the resident teachers concurred. The objects, which the new school of University reformers had chiefly in view, were to get rid, as far as they could, of all remaining restrictive qualifications for College emoluments of every kind; to enable Fellows holding College offices to marry; and to make the Colleges contribute, out of what were assumed to be their surplus funds, to the support or augmentation of the stipends of University Professors and Lecturers, and other University purposes. It was supposed, that the College revenues had increased, and were likely to go on

increasing;—the collapse of British agriculture, with the consequent fall of rents and other forms of return from land, which was soon to take place, was not foreseen. Lord Salisbury thought, that a case was made out for reviewing the operation of what had been already done, and considering the expediency of further changes; and he desired to entrust that duty to a fairly-constituted Commission, in which it was at first intended to include Lord Redesdale and Dean Burgon, as representatives of the Conservative principle; but Dean Burgon's appointment, being objected to, was not persevered in. I was myself frankly told by Lord Granville, that on Academical questions I must not expect unlimited confidence from the Liberal party; an intimation which I not only took in good part, but which was more agreeable to me, than if I had been expected to act as in any sense their representative. When my nomination as Chairman was first suggested, I wished to decline it; but on the next day Lord Salisbury wrote to me, in a way which I felt unable to resist:—

You must allow me to enter an appeal from your judgment, pronounced last night without argument of counsel being fully heard. It is of great importance to the University, that the Commission, and most of all its Chairman, should inspire confidence on both sides in the political society of the place. The changes to be made do not involve any political doctrine, at least they need not and ought not to do so. But each side will suspect the other of trying to work the Commission for its own benefit. This suspicion will be silenced if the composition of the Commission, and especially the character of the Chairman, forbid it;—still more, if the Chairman be a man known to have the interests of the University very deeply at heart. But such

men are rare. If you refuse, I do not know where to look. I shall be compelled to take some Chairman with strongly marked proclivities; and, coming from us, that leaning must be on the Tory side. The consequence will be, that the changes accomplished, instead of being by consent, will be subjected to incessant storms of cavil and suspicion. . . . I do not see why your attachment to Oxford will be in the least degree tried in performing the duty of a Commissioner. The operation of the Act, in suitable hands, will be destructive of nothing, except some of the crude results of the first Commission. In the interests of the University, I must earnestly hope you will reconsider your first thoughts of last night.

It is probable, that the changes recommended by the Commissioners, and actually made, were larger than Lord Salisbury contemplated. To many of them,—such as the increase and better endowment of the University Professoriate, the connection established between some University Chairs and Colleges providing or contributing to their endowment, and the equalisation, as far as possible, of the value and conditions of tenure of scholarships,—I gave a willing consent; though whether those relating to the Professoriate have been so fruitful of good as was hoped, may admit of doubt. But there were others, as to which, if I acquiesced in views urged with a great weight of local authority in the voluminous evidence which we received at Oxford, I did so with misgiving and reluctance. I was, and have never ceased to be, apprehensive, that the extent to which the marriage of Fellows holding tutorships and some other College offices was to be for the future permitted, and the necessity of providing pensions for them on retirement after long service, might have bad effects in

several ways,—not the less, because those effects might not be fully developed until after some considerable lapse of time. Married tutors could not have the same intercourse with and the same opportunities of personal influence over their pupils, nor could they take the same effective part in the maintenance of College discipline, as when resident within the walls. And, as time went on, there must be motives, sure to operate as long as human nature is the same, for the continuance of married men in tutorships and College offices longer than, for the good of the College, might be desirable. To dismiss them on pensions, burdensome enough to the College, but much below the emoluments of official Fellowships, would often be invidious and difficult; a married man with a family, who thought himself able to go on, would cling to his office as long as he could. And, with respect to clerical Headships and Fellowships, it appeared to me, that the real interest of a College was sacrificed to other considerations, when a valuable endowment of a Headship to which clerical duties were attached was given up for the mere purpose of enabling the Head to be a layman: and also, that it would have been desirable in every college, to retain the clerical qualification as a condition of eligibility for more than one Fellow (it was in some cases not without difficulty that it was retained for even one) in order to provide adequately for the religious instruction of the College, and its Chapel services.

Upon questions such as these, the hands of the

Commission were forced, not so much by the prevailing current of opinion in the University, as by the operation of a provision in the Act of 1876, plausible in itself, and in its first aspect of a Conservative (though really, as it turned out, of a contrary) tendency. It required, that for the purpose of considering and determining all questions relating to each particular College, three special Commissioners chosen by that college itself should be associated with those appointed for the general purposes of the Act. These Special Commissioners were enough, in almost all cases of a division of opinion among the members of the general Commission, to turn the scale; and their influence, for the most part, was exerted in the direction of the changes to which I have referred. Some of those changes were not finally settled till after I had left the Commission: but enough had been done towards the settlement eventually arrived at, to make me look back upon my own share of the responsibility for them with by no means unmixed satisfaction.

CHAPTER XVIII

THE FOLKESTONE RITUAL CASE, 1877 — PROJECTS OF CHURCH LEGISLATION, 1879 — LETTERS ON THE BISHOP OF LINCOLN'S CASE, 1889-1890.

THE spring of 1877 was memorable for the decision of the Folkestone Ritual case. I was unwilling to sit as a member of the Judicial Committee on that Appeal; foreseeing that, if the Ritualists were not successful, I should be cut off more than before from some of the means of usefulness upon Church questions, which might otherwise remain open to me. But my services were thought necessary by those who had a right to require them: and the opinion that I ought not to refuse them was expressed by several of my best friends, men of various ways of thinking, some consulted by me, and some who communicated with me of their own accord.

There was, indeed, one reason which, if it had not affected others as well as myself, might have been sufficient to excuse me. I had been professionally consulted, as long before as 1866, with other counsel, upon one of the questions which arose in that case, as to the "Ornaments of the

Minister": and our joint opinion[1] had been at the time made public. It was in accordance with the subsequent decision of the Judicial Committee in 1871 in Mr. Purchas' case[2]; which (having been pronounced without hearing the defendant, who did not choose to appear) it was now intended to bring under review. But of the Privy Councillors, ten in number, who formed the Court in the Folkestone case, four others were in the same position,—Lord Cairns, who had concurred in my own opinion; Lord Justice James, Sir Fitzroy Kelly, and Sir Robert Phillimore, who (consulted by other parties) had dissented from it; and their opinions had also been published. Three, at least, of these thought it their duty to hear the case; which precluded any objection, on my part, on that ground. Lord Cairns, as Chancellor, was justly desirous that the Court should be formed with impartiality, of as many members of the greatest available judicial standing (not parties to the Purchas judgment) as could give the necessary time to it without neglect of other duties. Judges are often obliged to decide questions on which they have given opinions at the Bar;[3] and experience has shown, that they can do so with fairness, and will not hesitate, for sufficient cause shown, to decide against their first impressions. A

[1] Those who concurred with me in it were Sir Hugh Cairns, Mr. (afterwards Sir George) Mellish, and Mr. Barrow.

[2] *Hebbert* v. *Purchas* (Law Reports, Privy Council Cases, vol. iii. p. 605).

[3] *i.e.* when they arise between other parties—not the same whom they advised.

notable instance of this was afforded in the Folkestone case itself; for the opinion of Lord Justice James, after hearing and considering the arguments, was different from that which he had formed and expressed in 1866.

The arguments began on the 23rd January 1877, and lasted many days. The two principal questions were (1) Whether the use of the Eucharistic vestments of the First Prayer-Book of King Edward VI. was required or authorised by the (so-called) "Ornaments Rubric" of the present Prayer-Book; and (2) Whether in the consecration of the Sacrament of the Holy Communion the Priest might stand in what is commonly known as the "Eastward position." Both these questions had been determined in the negative, by a Court of which Lord Hatherley and Lord Chelmsford were members, in Mr. Purchas' case; but they were allowed to be reopened, on the ground that it would be unsatisfactory to hold a Judgment *in absentem* conclusive, upon such points, against other ministers of the Church. James Fitzjames Stephen, and Arthur Charles (both afterwards Judges) argued for the appellant, Mr. Ridsdale, with certainly not less power and learning than Dr. Stephens and Mr. Benjamin Shaw, on the other side. The first point, as to the vestments, was, after great consideration, decided against them on the 12th of May, by a majority of seven opinions to three[1]; as

[1] The seven were, Lord Cairns, Lords Justices James and Brett, Sir Montague Smith, Sir James W. Colville, Sir Robert Collier, and myself: the three were Lord Chief Baron Kelly, Lord Justice Amphlett, and Sir Robert Phillimore.

the minority (or some of them) in contravention of the established rule of the Privy Council, afterwards made known. The other point, as to the Eastward position, was without difference of opinion decided in their favour, subject to the condition that, wherever the Priest might stand, he should so perform the "manual acts" at the time of Consecration, that those acts might, in a reasonable sense, be visible by the Communicants; which could be done without difficulty, if the Priest thought fit.

The discontent, always felt in controversies of this kind by the unsuccessful party, was in this case aggravated by two causes,—the one, that the argument in their favour from the letter of the "Ornaments Rubric," taken by itself, was more easily apprehended by most men than that against it, which depended on the history of that Rubric and its relation to other laws, not less authoritative; the other, that one, at least, of the members of the tribunal who dissented from the Judgment acted towards his colleagues in a manner for which, it may be hoped, there have been few or no precedents. What passed among them, not merely under the safeguard of the Privy Council rule of secrecy, which Sir Fitzroy Kelly after the Judgment openly disregarded, and against which he wrote a pamphlet,[1]—but in that interchange of mutual con-

[1] Entitled, "*A Letter to the Lord High Chancellor*," etc. In reply to this, and to some other publications of a like tenor, I wrote a vindication, and a historical account, of the *Judicial procedure of the Privy Council;* which I printed privately in 1881, without my name; and which is now (1891) published.

fidence which was necessary while the matter of the Judgment itself was under consideration,—was divulged to some one, who (two months before the Judgment was given) communicated it to the *Church Times*, the most intemperate, at that time, of the organs of the Ritualist party. Nobody could have done this, except a member of the Court; for no one else was present at their deliberations: and it was done in such a manner as to cause the publication by that newspaper of the information which it had received as to the state of opinion among the Judges to be accompanied by offensive personalities, and the imputation of motives and reasons, for which there was no foundation. When the members of the Court met for their next conference, all disclaimed what (as was nevertheless apparent) one of them must have done;—the most charitable supposition was, that a habit of loquacity might sometimes prevent men from being aware of what they were saying, or remembering what they had said. The majority thought it right, under these circumstances, to adhere to the general rule, that dissents from the Judgment should not be declared—a rule, not known to have been departed from, except when Bishops[1] were concerned. But the

[1] In the Gorham case, when the Bishop of London (Blomfield) desired that his dissent should be declared, there was no reason for not also declaring that of Lord Justice Knight-Bruce; which was done. [Since this was written, Sir Walter Phillimore (in 1891) has brought to light one or two cases of private Appeals, previously unknown to me, in which the same thing was done, when lay Judges only were sitting.]—S.

communications to the *Church Times* went on: and, in its first issue after the delivery of the Judgment, it was represented, that one of the members of the Court (meaning, evidently, Lord Justice James, a man as high-minded as he was intellectually powerful) had been coerced by Lord Cairns into going with the majority, by the intimation, that his getting a peerage or not would depend upon his vote—an honour of which, as far as I know, he was never desirous. A libel so gross might have deserved a criminal information, if the men concerned had thought it worthy of their notice. During the summer Assizes which followed, Sir Fitzroy Kelly, while on the Welsh Circuit, had a conversation about the Judgment and the Judges with a Carnarvonshire clergyman, accusing those who differed from him of proceeding upon grounds of policy, not law: which was made public. For this imputation, there was not only no warrant upon the face of the Judgment, but nothing had passed in their most secret deliberations to excuse or account for it: the only member of the Court who, to my knowledge, suggested any consideration of expediency, was one of the minority; a very honourable man, who considered its bearing to be in favour of his own opinion, which he had doubtless formed on better grounds. The publication of this Welsh conversation of Sir Fitzroy Kelly elicited from Lord Cairns a remonstrance, remarkable for dignity and temper; and the Lord Chief Baron, while insisting on his right to disregard the Privy Council rule, disclaimed

what was offensive in the language reported to have been used by him.

Some of those who, after the Judgment, thought themselves at liberty (as Dr. Pusey did) to represent Sir Fitzroy Kelly, Sir Robert Phillimore, and the third excellent member of the Judicial Committee who took the same view, as "without bias," and all the rest as "under bias," did not think it improper to endeavour, between the conclusion of the arguments and the delivery of the Judgment, to bring their own influence to bear upon the minds of those whose duty it was to judge according to law. Dr. Pusey himself wrote to me on the 15th March 1877,—after the first of the articles to which I have referred had appeared in the *Church Times*:—

I hope (he said) that it will not seem to you to be presuming upon the relations of former days, if I write to you about the pending Judgment in the Ridsdale case. I am not going to trouble your Lordship about law,[1] which is your province, not mine. But, apart from what may be said as to law, I cannot doubt that to simple minds it will seem inconceivable, that the English Church should put into the hands of its clergy our Prayer-Book, containing a direction (the Ornaments Rubric) which it should be unlawful for us to obey. Your Lordship knows that I am no Ritualist. I am thinking only how it would affect people's sense of the justice of our Courts. The Prayer-Book has still, I suppose, the authority of Parliament. It, and not Canons or Injunctions (if they interfere with it), are the authority which we have to obey. How far we are dispensed by the tacit consent of the Bishops, I know not. I have assumed, in practice, that we are. Still, in whatever way *we* may be free, I cannot think that plain Englishmen can ever be

[1] It is difficult to understand this disclaimer; for the whole bearing of what followed was upon the question of *law*.

persuaded, that it is unlawful for a clergyman to do what the Prayer-Book says is to be done. But I suppose that no one questions, that what are called "the vestments" were in use in the second year of Edward VI. Your Lordship will not object to my using great plainness of speech. I cannot but think, that men's natural sense of justice will be against any decision against the use of the vestments. The Ritualists are a body of men who do very valuable work for souls, but who have become unpopular, through the arbitrariness of a few. It will be supposed that they are sacrificed to what is popular. What the result would be, no one could tell. No one High Churchman (who, of course, alone considered the subject) had the slightest doubt, that what are called "the vestments" were prescribed by the Rubric in our Prayer-Book. We, the older, thought that it was for the Church, not for individuals, to revive them. But I cannot imagine how any one can think that they are not in that Rubric, which our Church gives us in the Prayer-Book. I doubt not, that any expression to the contrary would be a great shock to those who, like myself, are no Ritualists. I have long looked forward to this decision of the new Court of Appeal, as giving us peace, and making different parties tolerate one another. I hear rumours, which fill me with dismay, and which occasion me to write to you, if so be there may be hope. Else, I foresee nothing but the sword, which will cut off, one by one, many of those who work most faithfully for our Lord, or that the Church of England be disestablished, and so broken to pieces. I need not say that I, of course, do not look for any answer to this letter, which is only written to convey information to your Lordship which is more at my command.

I was not satisfied to leave such a letter unanswered; so I wrote, on the 19th of March, this reply to it:—

DEAR DR. PUSEY—Although you do not wish me to reply to your letter, the high respect in which I have always held your character and work prevents me from doing otherwise than acknowledge it. It is impossible for me to doubt the excellence of the motive for everything which you do: but I am sure it

must occur to you on reflection, that *my* duty is to decide according to my own sincere convictions (whatever they may be) as to the true meaning and legal effect of the Act of Parliament establishing the Prayer-Book, and the Prayer-Book taken in connection with that Act. Were I to permit myself to be influenced to decide against those convictions (be they what they may) in order to avoid giving offence to High Churchmen or to Low Churchmen, I should deserve the condemnation of every good man, and amongst others of yourself. As long as I and my colleagues decide honestly according to our real view of the questions which our duty to the Crown obliges us to decide, the responsibility of anything which may be said or done by those who may think themselves more capable than we are of determining such questions must rest with themselves, and not with us. With respect to the "rumours" to which you refer, I suppose they must be founded on the statement of a certain newspaper (of which a copy has been sent to me) that it has received information of what has passed during the secret deliberations of the members of the Judicial Committee, which every one of that body is bound by his oath of office not to divulge. It is needless to say that, unless I were to imitate the conduct imputed to some member of that tribunal not named, I am precluded from every sort of observation which could have the slightest tendency either to confirm those rumours, if true, or to contradict them, if false. You may, however, rest fully assured of this, that there is no foundation for the shameful suggestion which is made by the same paper, that any member of the Court proposes to decide on the questions before it otherwise than in accordance with his own real convictions.

Dr. Pusey replied, on the 22nd of March, by way only of "personal explanation." He said :—

My motive in writing was, that I thought that amid questions purely legal, what I might venture to call the "common sense" view of the case might escape notice. . . . I prefaced what I said, by saying (I think) that on matters of law I could not, of course, presume to say anything to your Lordship : but, as far as I read the pleadings, I did not remember having seen what I venture to call the common sense of the question urged ;

and I used to understand, that Judges had even pamphlets sent to them, which their authors thought might help them in coming to a decision. So I thought that I might send your Lordship those observations; since we English, on all subjects, go a great deal by what we think common sense. The convictions of a large body of practical minds have a certain presumption of being right. We, the Tractarians of some forty-four years ago, never had a doubt as to the meaning of what is called the Ornaments Rubric; although, since it was an obsolete law, we left it to the Church to revive it, feeling that our own office was to restore, by God's blessing, forgotten faith and practice. Now, when a body of men of very different characters of mind agree in taking simple words as a simple direction, I think that there is a strong probability that they are right. If those who use the vestments are wrong, I think that a heavy blame would fall upon the Church of England for having misled them. It is not the business of us, the clergy, to know about injunctions, etc., issued some three centuries ago, or to know about any other antiquarian question;—our business is with the Prayer-Book which is put into our hands.

The essential difference between Dr. Pusey's point of view and that of the Judicial Committee was, that he looked at nothing but the mere words of the "Ornaments Rubric," as printed before the "Order for Morning and Evening Prayer" in the Prayer-Book, and insisted upon taking it as the only and complete expression of the law upon the subject. If that had been the view of the Judicial Committee, their conclusion might have been the same as his; the mere construction of these words, if there had been nothing else to be taken into account, was not in controversy; although some of them were less apt for their assumed purpose, from Dr. Pusey's point of view, than from that of the court. But the majority of the Judicial Committee were of opinion, that the "Ornaments

Rubric" was not meant to be, and was not, a self-contained and independent law; but that it was a note or memorandum of reference to a particular clause in another law, Queen Elizabeth's Act of Uniformity; the authority of which was maintained and continued by the Statute of Charles II. which gave the force of law to the Prayer-Book of 1661-1662, and was recognised by the Convocation in which the contents of the book were settled; that Act itself being printed by their direction,[1] *in extenso*, at the beginning of the book, as it had been (without like authority) at the beginning of Queen Elizabeth's Book of 1559. The real question, therefore, was, whether the governing law, as to the "Ornaments" of the minister, was the note or memorandum of reference, or the Statute referred to by that note? The question, so stated, admitted of only one answer: The Statute must govern; the note could not alter, and was not meant to alter, its effect. The actual state of the law, under and by virtue of the clause referred to in Queen Elizabeth's Act, as it stood in 1661-1662, was preserved, not changed, for the purposes of the new Book. These questions depended upon the construction and legal operation of three Acts of Parliament, which a body of Judges accustomed to legal questions might reasonably be supposed to be as capable of understanding as Dr. Pusey and his friends. That the Judges were not unanimous (which often happens when there is a

[1] It is transcribed in the manuscript book, approved and signed by the members of the Convocation of the Province of Canterbury, and the proxies of the Convocation of York.

question fairly arguable) could not prove the majority to be in the wrong: and, as for bias, conscious or unconscious, that was an infirmity to which ecclesiastics were quite as liable as laymen.

The Judgment was long; but the main steps, by which the conclusion was reached, may be shortly stated. In Queen Elizabeth's Act of Uniformity there was this clause:—

> Provided always, and be it enacted, that such Ornaments of the Church, and of the ministers thereof, shall be retained and be in use, as was in this Church of England by authority of Parliament in the second year of King Edward the Sixth, until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of Her Commissioners appointed under the Great Seal of England for causes ecclesiastical, or of the Metropolitan of the Realm.

The Note of 1662 (called the "Ornaments Rubric"[1]) came into the place of another, which, upon the foundation only of that clause and without any other authority, civil or ecclesiastical, had occupied the same position in the Book of 1559, and thenceforth till the Revision of 1661; and which was, manifestly and beyond question, a mere note, or imperfect and abbreviated memorandum of reference to the clause in the Act. The difference between the two is best shown by placing them side by side.

1559.	1662.
And here is to be noted, that the Minister, at the time of the Communion, and at all other times of his ministration,	And here is to be noted, that such Ornaments of the Church, and of the ministers thereof at all times of their

[1] So called, but not really a rubric at all, for in the original book it is not red-lettered, as rubrics properly so called are.

shall use such ornaments in the church as were in use by the authority of Parliament in the second year of the reign of King Edward the Sixth, according to the Act of Parliament set in the beginning of this Book.

ministration, shall be retained and be in use, as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the Sixth.

It is true (I quote the words of the Judgment) that the former express reference to the Act of Elizabeth at the end of the Rubric is omitted. But, on the other hand, the Act itself is exhibited [at the beginning of the Book] as a law still in force; and the effect and obvious purpose of all the changes in the wording of the Rubric (with a single exception [1]) is to make it, as far as it goes, a mere extract from, and a simple repetition of, the words of the Act. The important words of the Act, "*until other order shall be therein taken*," etc., are not now for the first time left out;—the former Rubric had also stopped short of them, when it could not possibly control their legal effect. If the manuscript alterations in the handwriting of Sancroft acting as Cosin's secretary (much dwelt upon by the appellant's counsel), could for this purpose be accepted as evidence, they would prove, as a matter of fact, that the change was made because (in the language of the manuscript) "*these are the words of the Act itself.*" Their Lordships do not think that such evidence is admissible; but the same reason is legitimately to be inferred from the comparison suggested by the Preface to the Prayer-Book. It is easy to understand why the words of the Act should be as closely as possible adhered to, if those words, as found in that Act, were still the law authoritatively governing the matter. The words "*shall be retained and be in use*," were not in the former Rubric, but they were in the Statute. If

[1] The words, *at all times of their ministration*, were not in the Act. But the very intention of those words (so altered from the form of 1559 as no longer to mark or imply a difference between "the time of the Communion," and "all other times of ministration") is more easy to be understood, if the change made by the "Advertisements" of 1566 and the Canons of 1604 is taken into account, than if it is left out of sight.

intended as a mere extract from the Statute, or to continue and carry forward in 1662 the use of those things which were then actually, or in contemplation of law, in use under that Statute,[1] they are apt and appropriate; but if it was meant to bring back an old and long-disused state of things, by making the Rubric of 1662 for that purpose a new point of departure, while repealing the 25th section of 1 Elizabeth cap. 2 and all that had been done under it, the substitution of this particular language for the words of the former Rubric, "*the Minister shall use*," etc., and the recurrence to the exact phraseology of the enactment about to be superseded, would seem to be the most inappropriate way conceivable of accomplishing that object.

It being determined, on these grounds (fortified by a clause in the Act of Uniformity of 1662, which kept in force all former "good laws and Statutes for the uniformity of prayer and administration of the Sacraments," and made them applicable, as far as they could be applied, to the New Book), that the so-called "Ornaments Rubric" was still what it had been before,—a memorandum or note of reference only to the clause in Queen Elizabeth's Act,—it followed that what had been lawfully done in the interval between 1559 and 1661 by the authority of the Crown, by virtue and in exercise of the power reserved by that clause, and therefore consistently

[1] Some critics of the Judgment accused it of putting the negative "*not*" before "*be retained*," etc. If it did so, *all* the ornaments, not of the Minister only, but of the Church, which were in use in 1549, would be prohibited, and nothing would be ordered instead of them, for those matters and occasions as to which the "Advertisements" of 1566 made no change. Those critics appeared to forget that the Rubric, and the clause in the Act of 1559 to which it refers, cover *all* the ornaments of *the Church*, as well as those of the Minister; and *all* the ornaments of the Minister, not merely those to be used during the Eucharistic service.

with and under the terms of the clause itself, was meant to remain, and did remain, in force. Queen Elizabeth (as the Judicial Committee held, with not more than one, if any, dissentient) *did* lawfully exercise that power, by authorising the issue of the "Advertisements" of 1566; which introduced[1] a distinction between Cathedral and Collegiate Churches (in which copes were to be used in the ministration of the Holy Communion) and parish churches, in which "every minister saying any public prayers, or ministering the sacraments or other rites of the Church," was to "wear a comely surplice, with sleeves." And these directions of the "Advertisements" (referred to expressly as such) were in 1604 incorporated, in the same terms, into the Canon Law[2] of the Church, by the authority of Convocation with the assent of the Crown. These directions of the Advertisements, so repeated in the Canons, were "another order," different from that of the second year of Edward VI., so far as the use of the Eucharistic vestments are concerned: they were uniformly recognised as law in the Visitation Articles of Bishops and Archdeacons, and in other authoritative ecclesiastical documents; and they were enforced by judgments of the ecclesiastical Courts. The Judicial Committee held, that they never ceased to be law, from the time of their first promulgation in 1566 to the present day.

If, in such a matter, there were room for reason-

[1] Cardwell's *Documentary Annals*, vol. i. pp. 291, 292.

[2] Canons 24 and 58 of 1604.

able doubt, it would have been enough, in the judgment of the Committee, to solve it, that "for nearly two centuries succeeding 1662, the public and official acts of the bishops and clergy of the Church, and of all other persons, were inconsistent with the supposition that the Rubric of 1662 had made any change in the law." It was not disputed, that the subsequent practice, in parish and non-collegiate churches, till about 1840 or later, was on this point consistent with the Advertisements of 1566 and the Canons of 1604, and not with any other state of the law. The Rubric, so far as it applied, was imperative, not permissive; there was no trace in it of any option to use or not to use any particular ornaments; what, under its terms, *might* be used, *must* be.

A Church Rubric (as was said in the Judgment) taking the form of directions to be acted upon by large numbers of persons from week to week, and from day to day, is a subject above all others for exposition by contemporaneous and continued usage. It was abundantly clear that, if any person had imagined that the Prayer-Book of 1662 introduced a change on this subject, there were many who would gladly have acted upon it. No instance had been given of any person having acted upon it. On the other hand, every one continued to act according to the old law; although, if the argument of the appellant were correct, every one in so doing was acting illegally. The practice,[1]—consistent with the old law, inconsistent with the argument of the appellant,—had been uniform, open, continuous, and under authoritative sanction.

None of the divines who gave its actual form to the "Ornaments Rubric" of 1662 had acted them-

[1] *i.e.* in parish churches, etc., not Collegiate—to which alone the question related.

selves, or (when in authority) suffered others to act, upon the notion that it enjoined or permitted the use in ordinary parish churches of the Eucharistic vestments of 1549. Archbishops Sheldon and Sancroft, Bishops Cosin,[1] Morley, Henchman, and Pearson (and many more[2]) had officially required the use of the surplice in all such churches, as well in the administration of both the Sacraments as at other times.

If the appeal had been made (as Dr. Pusey thought it ought) to "common sense," my own common sense, certainly, would have rejected the notion, that a change in the law of the Church of England as to such a matter as this, affecting the public administration of the Holy Communion, could have been made by men of station and reputation in the Church, under the circumstances of that time, without an intention that it should be acted upon by themselves, or by any one else;—still more, that they should have always exercised their official and public authority in a manner inconsistent with the supposition that any such change had been made in the law.

Nothing which has since been written, said, or done, by Dr. Pusey himself, or by any one else, upon this subject, has shaken my conviction, that the Judgment in the Folkestone case was right.

[1] See Cosin's Works, vol. iv. p. 508 (*Libr. of Anglo-Catholic Theology*, 1851).

[2] Their Visitation Articles are collected in the Appendix of the Second Report of the Ritual Commissioners.

To the Rev. Edwin Palmer

Godington Park,
Ashford, Kent, *7th April* 1877.

It seems as if we were living in a season of diplomatic triumphs. I cannot but think that Russia has just won a great diplomatic triumph, in the Protocol, etc. But even that seems to me to be eclipsed by the cleverness of the wirepullers of the English Church Union, who have contrived, at this most critical juncture of Church affairs, to obtain such signatures as those of Dean Church, Mr. Dalton, Edward Talbot, etc., to what I am compelled to pronounce a manifesto in favour of Disestablishment. For, both according to the natural meaning of the document when left to speak for itself, and as it has been interpreted by the letter of Frederick Blomfield in its defence (in yesterday's *Times*), it affirms these two things: (1) that we cannot go on under the present relations of Church and State; and (2) that we cannot go on, unless these relations are so altered, as to increase the legislative power of Convocation on the one hand, and limit the legislative power of Parliament on the other.

Now, if a man were to say (1) the British monarchy cannot go on as it is; and (2) the only condition on which monarchy can go on at all in this country, is that of restoring the Heptarchy, I should say, he must either be out of his senses, or have made up his mind, practically, to work for the establishment of a Republic.

Of course, a man *may*, honestly and consciously, have made up his mind to work for the establishment of a Republic, or for the Disestablishment of the Church. But it takes one's breath and heart together quite away, when the very class of men, on whose sobriety and moderation one relied most, as a hopeful element in the present state of things, are found either to have cast in their lot for Disestablishment, or not to have in them *stamina* enough to keep them from being drawn in by their sympathies to become the instruments of men, whose principles and objects are not really the same as their own.

You are well aware that I have not myself failed to recognise

the difficulty of Ecclesiastical legislation, as being a weak point in the existing state of things, both because the elasticity and expansive power of any system of administration and government is inconveniently fettered, if there be not reasonable facilities for legislation; and also, because the defects of all human laws and of all tribunals which can be devised to administer them, need to be supplemented by the corrective power of legislation. But it seems to me to be a patent truth that there are only two ways in which that want can be supplied in the Church of England—the one, by Revolution or Disestablishment (the working of which must depend essentially on conditions not very easily to be foreseen, and still less likely to be controlled by those Churchmen who promote it)—the other, by working on the lines of the existing Constitution in Church and State, which make any limitation of the power of Parliament absolutely impossible, but which make a greater use of the functions of Convocation, subject to the control of Parliament, quite within the limits of possibility. Nor is there, really, any need to agitate for this latter alternative; for the course of events itself has been, for now a considerable length of time, gradually, but constantly, working in that direction, and the consequence has already been, the recovery of elasticity and expansive power by the Church to a greater extent (I begin to fear, from this and other late manifestations) than she is well able to bear.

There is only one direction in which I have ever myself felt the existing conditions of Church Judicature to be really too predominant, and that is, when questions of doctrine have been involved. The judicial office in such cases is (of course) only to apply the rules, which it finds laid down as law by a higher authority; and, in all the cases of that kind which have excited the feeling I have referred to, it has done so, not positively but negatively, with a leaning to *liberty*, which has sometimes seemed to me to be carried too far, but which has equally actuated the Judgments of the Civil tribunals, when they have had to deal with similar questions in Disestablished Churches. Such decisions, even when entirely right, may often indicate a defect in the law, which, under a perfect system, might be supplied by new dogmatic legislation. And yet, so difficult and hazardous

is all dogmatic legislation (especially in a National Church), that it may well be doubted whether things would be better among us if it were made more easy. And it seems to me to be remarkable that all this present uneasiness is not about doctrine, but arises solely out of the discovery that is being made, that clergymen cannot act upon their private judgment on question of ritual, beyond certain limits, without coming into conflict with a law strong enough to compel their obedience.

I could not help writing this, for nothing that has yet happened had so much grieved and discouraged me as this manifesto.

30 Portland Place, 11*th April* 1877.

I have liberated my soul, and obtained that relief for painful thoughts, which is found in pouring them out *tutis auribus;* and you have said what you thought to the purpose, in explanation or justification of the action of our friends. I should be glad to think that I had misinterpreted their meaning, but, if I did, I must still look upon them as very unfortunate in their way of expressing it; of which, no doubt, the true explanation is, that it originates with one sort of men, and has got to be signed by men of another sort.—Yours ever affectionately,

Selborne.

In the autumn of 1879, I received a letter from Archdeacon Denison, asking me to take the Chair at a Meeting to be held in London, in which he expected Churchmen of various shades of opinion to join, to protest against any legislation as to the Prayer-Book. The Convocation of Canterbury, under letters of business from the Crown, had reported in favour of certain changes; and a Bill to facilitate them had been introduced into the House of Lords. He desired to organise a demonstration in favour of leaving things

as they were. I declined the part which he proposed to me, in the following letter :—

DEAR ARCHDEACON DENISON—To comply with any wish of yours would at all times give me pleasure : but you are the last person to desire that I should do so, in the present case, without the concurrence of my own judgment.

I have long thought it right to avoid, as far as possible, every course of action which might interfere, at some future time, with my freedom and independence of judgment in the discharge of any public duty : and this, according to my observation, is likely to be the effect of most appearances on a "platform" of persons in such a position as my own. I should not, indeed, let this rule stand in the way of any opportunity of doing greater good elsewhere than in Parliament, if I saw clearly that there was such an opportunity ; but, for the same reason, I hold it to be an absolute duty to act upon the rule, when it seems to me (judging as well as I can), that, by doing otherwise, I should be diminishing, and not increasing, my chance of doing service when it might be really wanted. And this is my judgment upon the present occasion.

As an individual Churchman, I am certainly no advocate of any Liturgical changes which cannot be proved to be necessary to avoid greater evils. I do not think everything in the Liturgy perfect ; but I know better than to expect perfection in anything, or to suppose that a course of change, once entered upon, would stop exactly at what I might consider the right point. Having lived, until now, with a clear conscience under the *status quo* (in this, as in other things), I can continue to do so. But, though myself content with the Prayer-Book as it is, I do not think that to maintain a duality within the Church of inconsistent conceptions of what the Prayer-Book requires or authorises is really to abide by it. The ceremonial directions of the Prayer-Book cannot, in my opinion (any more than any other law, either civil or ecclesiastical, originating in and variable by human authority), be understood apart from the interpretations placed upon them by the Judicature established for that purpose by public authority : nor does it seem to me to be of the smallest practical importance, whether I personally agree with those interpretations or not ;

nor whether the Judicature actually established is such as I think (founding myself either on my own inferences or on those of others, from Church history, or from preambles to English Acts of Parliament), an Ecclesiastical Judicature ought to be. Law and Judicature are, to my mind, inseparable correlative ideas: the latter is implied in, and is really part of, the former: and to deny the moral obligation of obedience to all the existing Judicatures, in any Society, is really to deny the laws of that Society, or to maintain that there is in it no law, but only anarchy. If, therefore, the law of the Prayer-Book, as so interpreted, is on any points such as it is not expedient to enforce, I see no alternative but to alter it, whether the alterations are such as I should myself have preferred, or not. To say (as I fear your proposed Meeting will say) that neither practice shall be made conformable to law, nor law to practice, may be consistent in those who are (as I rather think you are),[1] prepared to advocate what is called "Disestablishment"; but not in those who think, with me, that such a change would introduce greater evils than any belonging to the legal *status quo*.

I am far from insensible to the existence of weighty arguments against the particular scheme of Church Legislation, which it is your present object to oppose. But it is a different question, whether these preponderate over the arguments on the other side.

. . . . . .

Whether our existing instruments are the best conceivable, or not, we must unavoidably work under them, and (as far as we work at all) with them, until we get others by lawful means: which, in an Established Church, must necessarily be means recognised as lawful by the Civil as well as the Ecclesiastical power. For these reasons, it is impossible for me to

[1] Archdeacon Denison in his *Mr. Gladstone*, etc. (Ridgway, 1885, p. 32), says: "I did for some years join myself with those who were for what is vulgarly called, Disestablishment. I don't think much was said by those who were promoters of the movement about its twin sister—Disendowment. I have, for a good many years now, seen all my unwisdom here also; and, as in other cases, have returned to my senses and confessed my fault."

take part in either of the meetings which you propose to hold.—Believe me, etc., yours faithfully, SELBORNE.

[The following letters written ten years later are here given as bearing on the subjects treated of in this chapter.]

TO THE HON. SIR ARTHUR GORDON

BLACKMOOR, PETERSFIELD, 10*th January* 1889.

As to the Bishop of Lincoln's case, I agree with you that it is, in every point of view, a great misfortune and full of dangers to the Church.

I may, perhaps, in another letter recur to what you say as to the general question of Ritual Law and the Judicial Committee, apart from this unhappy case. I have now only time to add, that when I told you the Judicial Committee, or the Order in Council founded on its report, had excluded all discretion on the Archbishop's part, I was under an impression which the Archbishop had conveyed to me, but which was not entirely correct. What really happened was this. In the Judgment, orally delivered, the Judicial Committee did profess, and no doubt meant, to leave open the question whether the Archbishop, taking cognisance of the case, could still lawfully exercise any discretion, either as to the manner of proceeding in it (*e.g.* by *citation* or by *visitation*), or as to stopping it altogether. The Order in Council *directed* him to "proceed *freely*" in it, so as to "*do justice between the parties.*" This I should myself judicially interpret as leaving him a *judicial*, but virtually excluding an arbitrary discretion, which, if exercised in a manner which could not be called "*doing justice between the parties*" would be irreconcilable with the express words of the Order in Council, and not clearly intended by the oral Judgment. At all events my own opinion was and is clearly that under these circumstances it was the official duty of the Archbishop to proceed to hear and determine the case upon its merits, if he accepted

the Order in Council as settling the question of his *jurisdiction* over a suffragan accused of offences against the Ecclesiastical Law.

The only other thing I want to add is that the charges against the Bishop of Lincoln do not involve any question under the *Ornaments Rubric*. Not a few people speak (I think you do yourself in your letter), as if every sort of liberty, with all or any other Rubrics, or on points not regulated by any Rubric, might be taken, because upon the letter of the "Ornaments" Rubric the decisions of the Judicial Committee do not satisfy their minds. This, I confess, I do not understand. To me it rather seems to diminish the value which any of their objections to the decisions on the Ornaments Rubric might have had, that they assume the same licence on half a dozen other points, as to some of which they have really no agreement at all, to which any Court of Justice acknowledging the authority of the Acts of Conformity over the clergy could listen.

12*th April* 1889.

As to the Bishop of Lincoln's case, I agree, practically, in almost all that you say. I do not see any technicality by which the proceedings can possibly be stopped, unless (which I think improbable) the Archbishop should decide against his own jurisdiction, and should not be overruled on that point, either on appeal or by mandamus from the Queen's Bench. And, looking at the temper of the E.C.U. party, which appears to rate the evils of Disestablishment as less than those of submission to the Ecclesiastical Courts of an Established Church acknowledging the judicial supremacy of the Crown, I see no probable end to it, which I should not, with you, regard as calamitous.

I have been, for some time past, a negligent newspaper reader, and I did not see the letters signed "Scholasticus," to which you refer, nor did I even hear them spoken of. Of course, therefore, I do not know who wrote them. The signature reminds me that the word, in *old* Oxford Joe Millers, meant a *simpleton;* I should be slow to suppose that any writer with whom you agreed could be that. But I am afraid there is no use, even in the

wisest thoughts, if they are academical only and not practical. For my own part I am entirely of one mind with you in thinking that, under present circumstances, it is much better to submit to and acquiesce in deviations (even if they seem ever so wrong-headed) from the Act of Uniformity, as interpreted by the authorised Courts, on matters of dress, posture, and forms of ritual, than either to break up the Church, or to drive out of it bishops, clergymen, or laymen, who are otherwise good men, good Christians, and doing good work. I think, with you, that they have too strong a body of opinion on their side (even if it is chiefly among the clergy and such public writers as the clergy can influence), to make the strict enforcement against them of the law which they refuse to obey practicable, if it were expedient; and, consequently, that *both* sides—those who will not obey the law and those who invoke the courts to compel obedience to it in these points—are equally engaged in pressing forward disestablishment, and (perhaps) disruption afterwards, whether they intend it or not. Individually, I should, to the best of my power, discourage and discountenance prosecutions of this kind. Perhaps it may also be true that, independently even of our present circumstances, the Act of Uniformity is more rigid about these formal matters than it ought to have been; they are all, in comparison with spiritual and organic unity (at least in my judgment), *inexpressibly* trivial and unimportant, and it might be well, if some distinction had been drawn by the law between great things and small, and if dispensing power had been lodged somewhere. Those who chafe under the Act of Uniformity seem to forget that, whether wise or unwise, it represented the deliberate judgment of the Church of England, and was not forced upon the Church by the State, which makes a great difference between our case and that of the Scotch Secession.

13th June 1889.

. . . The Bishop of Lincoln is understood to acquiesce in the Archbishop's Judgment as to the jurisdiction. If he goes further and facilitates the trial by all proper admissions of facts, and acquiesces (so far as he is concerned) in whatever may be the Archbishop's Judgment as to the rubrics, he will deserve, and no doubt will be rewarded with the respect of all who do not wish

to see the Church of England fall a sacrifice to the unreasonableness of contending factions.

17*th October* 1889.

I think my last letter to you was on the much-vexed ecclesiastical questions, and that, in it, I omitted to take any notice of what you said about the "Ornaments Rubric" being a *trap*, if it was not meant to be understood as the Ritualists understood it. There might perhaps be some ground for thinking so if anybody had ever fallen into it. But it did not, in any such sense, catch its own framers, or their generation, or any generation which came after them, except our own; and in our own generation it can hardly be said to have caught any one *unawares*. "Ipse capi voluit" might, I think, be said of all who went into that trap; they had their own motives, and do not seem to me to have been by any means purists as to *Anglican* Ritual order. Even Dr. Pusey, though he defended them stoutly, never *did* the things which they do.

There is, I know, a notion in favour with some, that the revisers of the Prayer Book in 1661-62 meant the very thing, which all the Visitation Articles of Bishops down to that time, in their search after illegal ornaments, imputed to the favourers of Popery—to "keep them *for a day*" not their own day, but some *future* day, which might come. As far as my researches have gone, this notion seems to me to be as destitute of historical foundation and reasonable probability, considering the times and the men, as it is of the moral straightforwardness for which it is, *prima facie*, just and right to give such men credit.

Blackmoor, Petersfield, 26*th December* 1889.

Sophy and I spent three nights a little time ago at Addington; and I had some interesting talk with the Archbishop and the Bishop of London, who was there. We did not, of course, say much about the Bishop of Lincoln's case; but I could see that he (the Archbishop) was annoyed at protests against his jurisdiction being got up in different parts of the country. The sort of clergy who do these things really seem to have persuaded themselves that they can make or unmake legal jurisdictions at

their will and pleasure; or, if not so, that there is some kind of non-judicial infallibility in the clerical mind, which enables them to dispense with all legal methods when a question of jurisdiction or no jurisdiction has to be determined. I do not wonder at your sense of the extravagance of those who assume every thing which pleases themselves, or those by whom they are content to be led, to be "the law of the Church"; without (apparently) ever asking themselves or anybody else, of *what* Church? or how, and when, it became such a law? There are three classes of observances, of all which they thus talk alike, but which manifestly rest on wholly different grounds:—(1) Those which depend on private or party (as opposed to judicial) interpretation of some actual written law (*e.g.* the "*Ornaments Rubric*") of the present *Church of England;* (2) those which have been discontinued, so far as authority goes, in the present Church of England and cannot be shown to have been primitive, but had in mediæval times the authority of ritual usage, either locally or generally; and (3) those which have been in like manner discontinued in the present Church of England, but were not only mediæval, but primitive (*e.g.* the *mixed Cup*). As to the *first* of these classes, men who (for whatever reason) *reject* the judicial authority as not morally binding them, have at least some ground to go upon, in their own interpretation of the letter of an actual law. But, as to the *second*, it seems quite obvious that to assert the binding character of mediæval usages which the present Church of England has discontinued is to *unchurch* the present Church of England altogether. And, as to the *third*, it ought at least to be shown that they were *laws* of necessary and immutable obligation throughout the Catholic Church, before they can be held binding within a Church which has discontinued them.

. . . . . .

BLACKMOOR, PETERSFIELD, 20*th February* 1890.

. . . I certainly never meant to suggest that the Church of England would be *unchurched*, or its Catholicity rendered indefensible, by the discontinuance and subsequent resumption of any such primitive or mediæval practices as you refer to. What I must have meant to say was, that to assert *the necessity*,

for the Catholicity of the Church of England, of any such practices, which were in fact and in law discontinued by that Church at the Reformation, would be, in fact, to *unchurch* us. And I do not see how it could be otherwise. In my view such practices are, in their own nature, indifferent; either the use, or the disuse of them, may stand with the Catholicity of the Church.

BLACKMOOR, PETERSFIELD, 27*th February* 1890.

I turn now to your letter of the 18th January, of which I will take the ecclesiastical part first. My hasty slip of last week, enclosed in Sophy's letter, may perhaps have been no clearer to you than what I wrote before; so I will recur to the subject of it, only to say, that to affirm certain usages to be *necessary* for the Catholicity of a Church (a thing which I do not myself believe as to any ceremonial usages, except the Sacraments of Baptism and the Lord's Supper, and ordination to an apostolically authorised ministry), is equivalent to refusing the name of a Church to any Body which has them not, so long at all events as that stage of things continues. If, therefore, it were true, that the Anglican Communion was in this position from (say) A.D. 1559, to (say) A.D. 1859, the Anglican Communion would be "*unchurched*," at least during that period; nor am I able to see that the return of certain individuals, after 1859 (or whatever other date ought to be assumed), to those usages, without any public or corporate action of the governing authorities of the Church of England itself in the same direction, could restore to that Church the claim to Catholicity which (*ex hypothesi*), she would have lost. If, on the other hand, there is no just ground for representing these things as necessary for the Catholicity of the Church, then I see no excuse or justification for any disturbance or disruption of the unity of the Church of England, or any contempt or defiance of its governing authorities, for the sake of bringing back those things.

You take the same line with Sir Walter Phillimore (in his recent argument at Lambeth), when you say "that you cannot regard the rubrics as a fixed and complete code"; that "they direct what, in certain cases, *is* to be done, but they do not seem to you to direct what is *not* to be done"; adding, that "if meant

to be a complete code, they are singularly insufficient to be the work of such able compilers, for there is more than one *casus omissus*"; which you proceed to illustrate, by the absence of directions as to the posture, or change of posture, of the congregation in certain cases. The whole of this line of argument seems to me to be, in principle, opposed to the express and clear declarations of the Prayer Book and Canons; and I cannot myself perceive that it receives any support from the absence of provision for things for which, assuming that "a complete code" was intended, it would *not* be necessary to provide.

First, I must take exception to your way of putting the case, that "*the rubrics*" are not "a fixed and complete code." Certainly *they* are not. It is the Prayer Book of which the rubrics are only a subordinate, subsidiary, and directory part, which *is* "a fixed and complete code." That it was meant to be so, seems to me to be expressly stated in the Preface "*concerning the services of the Church*," which (though itself older), is adopted and retained with reference to the Book of 1661-62. It recites the former *great* "*diversity*" of use in different churches of the realm; and says, that "*now from henceforth all the whole realm shall have but one use*"; it speaks of things "*cut off*" and "*left out*," in terms which plainly show, that *omission* of those things was meant to be *exclusion* of them; and of the necessity for "*some Rules*," as the reason why "certain Rules" ("four in number, and plain and easy to be understood") are "here set forth." And, in the direction for reference to the Bishop in case of doubt (which seems to have been contended by Mr. Jeune to give some countenance to the notion, that things not directed might be done by way of supplement), the same purpose of uniformity is, not less unequivocally, manifested. The doubts contemplated are only those which (however "*plainly*" anything might be "*set forth*") might arise "*in the use and practice of the same*"; and again, "doubts concerning the manner *how* "*to understand, do, and execute, the things contained in this Book*"; the declared object being, "to appease all diversity (if any arise), and the direction to seek the Bishop's guidance being given to all parties, that "so doubt, *or diversely take* anything." When it is added that the Bishop may not order anything "*contrary to anything contained in*

this Book," it is plainly to maintain and enforce the exclusive authority of the Book, as *containing the rule* for the Bishop as well as the clergy; not to enable him to authorise whatever he likes, unless in so many words prohibited.

The 14th Canon, also of 1604 (which, like other former laws, was by the Act of Uniformity of 1662 made applicable to the present Book of Common Prayer), enjoins, that "all ministers shall observe the orders, rites, and ceremonies prescribed in the Book of Common Prayer, as well in reading of the Scriptures, and saying of prayers as in administration of the Sacraments, without either diminishing in respect of preaching or in any other respect, *or adding anything to the matter or form thereof*."

To me it appears (I must say) clearly enough, not only that the Book (rubrics included, and of course including everything, Statute or Canon, to which the Act of Uniformity or any rubrics expressly or by implication refer), *was* intended to be and was a complete code of Public Worship for all the occasions on which it was to be used, but that the interpolation of anything into it which is *not* directed, is, in substance and in fact, *a departure* from what is directed, and a thing quite different, in its nature and character, from that liberty which (in the absence of express regulation) must exist, to do in one *manner* or another, where the *mere manner* is left open, that which *is* ordered to be done so long as the substance of what is ordered, without addition or subtraction is *bona fide* complied with. The instances which you give of the absence of express words directing the congregation either to sit, or to kneel, or to stand during certain parts of the service, come within the latter category, not the former; as does also the liberty of the priest to stand at any part of the Altar which he thinks convenient when doing what is appointed to be done by him (and that only), when the *north-side* direction is not expressly or by necessary implication, prescribed. The larger idea, that the Office prescribes only what *is* and not what is *not* to be done, seems to me to be destructive of the whole principle and practice of Uniformity, unless it is restrained to this latter category: if so restrained, it is true enough, and consistent with the reason and objects of a complete code, and of a general Uniformity. But, if so restrained, it does not justify

the things done by the ritualists, generally speaking; whether it may be fairly contended to justify this or that particular thing, is another question, into which it is not necessary for me to enter.

I will add, on this subject, that the whole matter found in the preface of the Prayer Book under the title, "of ceremonies, why some be abolished, and some retained," is absolutely inconsistent with the idea that *abolished* (which here means *disused*), ceremonies may be introduced or revived by the minister at his pleasure (or by any bishop either), merely because there are no negative words in the rubrics, saying that they are *not* to be used. In the preface, and in the positive directions, there is that "negative pregnant" throughout, which the 115th Canon puts into express words. The very notion of particular express negative declarations as to everything which is *not* to be done, seems to me (I confess) nothing less than preposterous, when we are concerned with a definite prescribed Order, enjoined for the purpose of Uniformity.

Two other observations will conclude all I have to say about this. The first (as is indeed intimated in the Preface of 1661-62), that the "direction of *them that are to officiate* in any part of the divine service" is the general object of the rubrics; direction to the people or congregation being a secondary, and a comparatively rare thing. The other, that some things (*e.g.* the use of hymns *before or after the end of* any prescribed service, or as adjuncts to the sermon, before or after it, not interrupting in either case the prescribed order), are *outside of* the prescribed order, and therefore, if otherwise justifiable, are not inconsistent with the principle, that nothing is to be introduced into it on the minister's part, at all events, which is not prescribed.

Having (as is my wont) dealt first with the question of principle raised in your letter, I will now touch on the practical questions. I cannot anticipate what the Archbishop's Judgment in the Bishop of Lincoln's case may be; but I agree with you in thinking that the prosecutors will be likely to go to the Privy Council, if anything is decided against them; and that a reversal of the Archbishop's by the Privy Council (even if it were only in affirmative of its own former decision) would be a very serious matter: whether things have not proceeded too far already, for

anything now to make much difference, may be doubtful.[1] You say, "the natural thing," under such circumstances as these we have to deal with, would be "to relax the law," in favour of the party who, with or without reason, refuse to obey it, either upon some such lines as those proposed by the Dean of Peterborough, or in some other way; but that the difficulty rests with the legislature, such as it now is. Nobody can deny that there *is*, and must be, difficulty with the legislature; not so much, I think, because of the way (inclusive of men of various forms of religion, and some of none at all) in which the legislature is constituted as on account of the present position of the "Establishment" question, and the attitude of Nonconformists towards it. But I am far from sure that, if this were the only difficulty, it might not be overcome. I myself, and many more who do not like the principles or the practice of the Ritualists, would be perfectly willing to relax the law, to any reasonable extent, in their favour: but, as far as I can see, there would be no chance of their being satisfied with any definite or limited alteration of particular rubrics, making it optional (subject or not subject, to conditions, such as local custom, episcopal permission, or anything else), to do, or not to do, some specified things; not even, if the reparation were made by the joint authority of Convocation and of Parliament. Certainly I do not differ from you when you say, that to imprison or deprive a third of the clergy of the Church for ritual causes (you probably put the proportion greatly too high, but I should say the same of a less proportion, including men of great zeal and devotion, and of blameless lives), would be a calamity of the first order; nor is it possible to doubt, that it would bring the house down upon our heads. If it can be averted by any right and reasonable means, it ought to be. I cannot leave this subject without calling in question your proposition (often enough advanced, indeed), that the Wesleyans were driven out of the Church of England. When? Where? By what proceedings, and of

[1] Those who were with Lord Selborne at this time can never forget his anxiety before the decision of the Privy Council; nor his overflowing thankfulness, at the confirmation by the Privy Council of the Archbishop's Judgment.—S. M. P.

what authority? My impression is, that the work was entirely their own—culminating in the step, forced upon Wesley by his preachers against his own principles, of assuming power to administer, without ordination, the Holy Sacrament.—Believe me, ever yours affectionately, SELBORNE.

I have no doubt there was much real religion in the country at the beginning of this century, and in the much-abused eighteenth century too. Every new form of religious zeal agrees in regarding the former state of things as dead and unspiritual; and, as long as the enthusiasm lasts, it does diffuse among those whom it influences a degree of activity, energy, and self-denial perhaps not equally possible, certainly not equally demonstrative, under the normal operation of settled ecclesiastical institutions. So it was with the Methodists, with the Evangelicals, with the Tractarians, so it is with the Ritualists; each in their turn. But I believe there never has been a time in the Church of England when there were not in every diocese very many clergymen devoting themselves quietly and consistently to the duties of their office, with a steady influence for good over all around them; and very many laymen, of as good a sort as any system could produce, in all ranks and classes of life. I knew in my childhood not a few such, who were not Evangelicals—and it was before the Oxford movement began.—S. (From annotated copy of Mozley's *Reminiscences.*)

CHAPTER XIX

METAPHYSICAL SOCIETY — INVERARAY — HICKLETON — BISHOP SELWYN — ADDRESS AS LORD RECTOR OF ST. ANDREWS.

1877–1878

I HAVE not, in these *Memorials*, made particular mention of my election, at different times, to clubs of a social character, to which it was a privilege to belong—"Nobody's," "Grillion's," "The Club" (Johnson's), and the "Literary Society" — at which the best ecclesiastical, political, and literary society was to be met with.

In 1877 I became a member of the "Metaphysical Society"—a Society, more of an intellectual than of a social character, though its members sometimes dined together. I attended several of its meetings during the short remainder of its existence; the last question discussed in it was as to the meaning of the words "metaphysics" and "metaphysical," about which, though involving the *raison d'être* of the Society, no two members were found to agree! Many of the most notable thinkers of the day belonged to it, and great subjects were discussed

freely, and without passion; I heard there many opinions which jarred upon my feelings; but I was not impressed by the argumentative force of those who supported them. On the other side were Dr. Martineau (a man of high religious as well as intellectual tone) and Mr. Hutton of the *Spectator;* Tennyson, the Duke of Argyll, William George Ward (whom I met there once only), and Father Dalgairns, of whose displays of logical power great things were reported. But the Society, when I joined it, had seen its best days. I might not have mentioned it but for a debate in which I took a strong interest, on "the influence upon morality of a decline in religious belief." I read a paper on that subject, which (with several others, not all contributed by those who were present at the discussion) was published in the *Nineteenth Century*,[1] for April 1877, under the title of "A Modern Symposium." It expressed convictions firmly rooted in my mind.

The points on which I insisted in it were, that morality had not flourished, amongst either civilised or uncivilised men, when religious belief had been generally lost or utterly debased. The influence of the principles of love and benevolence, humility and self-abnegation, which had been continually advancing with the growth of civilisation, was specifically due to Christianity; so were the greater respect for human life, manifested in various ways; the recognition of

[1] Mr. James Knowles, editor of the *Nineteenth Century*, was one of the three founders of the Metaphysical Society; the other two were Lord Tennyson and Mr. Pritchard.

moral and spiritual relations between man and man, inconsistent with the degradation of women and with the practice of slavery; reverence for marriage; and abhorrence of some forms of vice of which paganism was tolerant. Scepticism about morals would be the natural sequel of religious scepticism; morality being, for the most part, as little capable of demonstration through the evidence of the senses as the doctrines of religion. No practical substitute for the religious sanction could be found in ideas of duty depending upon tests extrinsic to the individual—such as that of the tendency of a particular course of action to promote the greatest happiness of the greatest number, or even the pursuit of a man's own happiness by a rule founded on the observation of what was most conducive to the happiness of men in general. Those motives were of necessity strongest which directly concerned the man himself. The foundation of every man's character and habits must be laid in youth, when he is inexperienced, naturally inclined to follow his passions, and not predisposed to accept the disquisitions of philosophers as a proof that his own happiness will not be promoted by seeking it in his own way. Those who are called "men of the world" are not indifferent to their own happiness, or to the good opinion of the world; from what they allow to themselves and others, even under the restraints of the moral atmosphere which Christianity has created, we may judge what a merely worldly morality, unrestrained by the authority, direct or indirect, of religion, would be likely to be. A rule founded on

the physical laws of nature, without taking into account the moral sense, would go but a short way, and would be very uncertain and indefinite. We have a complex nature, in which the forces which operate upon the will, either mechanically or in a way resembling the mechanical, are constantly in practical antagonism to the regulative faculty. The origin of all sensual vice is in the natural constitution of men's bodies, from which arises a sensible gratification in its indulgence. But when the moral sense is taken into account, we come at once upon the border-ground, if not into the proper territory, of Religion.

To a man who believes in a moral government of the universe, in the distinctness of the *ego*, the real man, from his bodily organisation, and in the doctrines of moral responsibility and moral adjustment in a future state, nothing can be more real, nothing more intelligible, than this moral instinct or sense, with its suggestions of right and wrong, of duty, guilt, and sin, and its judicial conscience. But, if all these postulates are denied, what is then to be thought of this moral instinct or sense? Why is it, on that hypothesis, less a mere accident of the nervous system, or of some other part of the bodily organisation, than the religious instinct, which is already supposed to be set aside, as resting upon no demonstrable ground? As a phenomenon, and in some sense a fact, it exists, just as the religious instinct does (if they be not really the same); but those principles of thought which explain away the one, as having no proper objective cause, and as indicative of no objective truth, may as easily explain away the other also. The one is not more susceptible of sensible and experimental demonstration than the other. If man were merely a higher order of the organisation of matter, homogeneous with and produced by spontaneous development from inorganic substances, plants, and inferior animals, and under no responsibility to any

moral intelligence greater than his own, what reality would there be in the conception of a moral law of obligation, inapplicable to all other known forms of matter, and applicable only to man?

A moral sense, believed in, was in reality itself religion — possibly inarticulate, but religion still. Such a belief could not exist, without accepting the evidence of the moral sense as equally trustworthy concerning those things of which it informs us, as the evidence of the bodily senses is concerning those things of which they inform us. The moral sense, believed in, was not merely a possible, but (as I supposed) the only possible human foundation of morality.

An intelligent belief in the moral sense naturally takes the man beyond himself, to a higher source of his moral conceptions, which it really presupposes; and any truths correlative to it, which are either ascertainable by processes of reason, or capable of being otherwise made known, will naturally, when they become known, be recognised in their proper relation to it, and cannot be rejected without doing it violence. Any such correlative knowledge of the higher truths (to the existence of which the moral sense testifies, though it does not fully reveal them) must enlighten, inform, and strengthen it. It is the office of such knowledge to answer authoritatively those questions which philosophy has always been asking, and has never, by itself, been able to solve. It harmonises, accounts for, and enforces by authoritative sanctions, the concurrent testimonies of the moral sense, the religious instinct, nature interpreted by reason, and reason enlightened by experience. On the other hand, the want, and still more the rejection, of such knowledge, (supposing it to be attainable, and true) must, in a corresponding degree, obscure, perplex, or discredit the moral sense.

I admitted that some men, who seemed to reject all religious belief, might nevertheless live up to a

high moral standard; just as there were some professed, and even real believers, who did the reverse. The moral sense never had been, and never would be, extinguished among mankind; there had always and everywhere been conspicuous examples of men who made it their rule of life;—there might be many such, even among very degraded races. But experience proved that in the greater number of men, where the light of religion was absent or obscured, there had always been a tendency towards a general deterioration of morality. The best ancient schemes of philosophy, founded on the moral sense, failed to compete practically with the Epicurean materialism, which did all that was possible to destroy it.

I denied the power of positive human laws to take the place of religious sanctions. They depended on morality, not morality upon them. I throughout spoke of "religion," in a sense exclusive of all systems usurping that name which took no cognisance of morality, or which were repugnant, in their practical precepts, to the general moral sense of mankind. Christianity, whatever imperfections might be found in any of the particular forms in which it was anywhere professed, was the great moral power of the world. It asserted the identity of its own essential principles with those of natural religion, while teaching that the moral government of the world had been so conducted as not to leave mankind dependent upon natural religion only; and it referred to a common origin with itself all the elements of religious belief, consistent with its own doctrines, which had been

at any time or place accepted among the nations of the world.[1]

It was acknowledged, during the discussion of that subject, that any standard of morality, which might survive a general decline of religious belief, would be different, in many and important respects, from that now recognised by Christian nations.

I contributed to another "Modern Symposium," in the October number of the *Nineteenth Century* (of the same year), a shorter paper, on "the Soul and Future Life." This, however, though it might be traceable to my connection with the Metaphysical Society, was not founded upon any discussion which had taken place there.

There were none among those who had been my colleagues with whom I was in closer agreement upon most subjects than the Duke of Argyll. I admired the Duke long before I knew him: a man of singularly pure character, of whose mind all the movements were vivid and energetic; a politician inflexibly upright; a clear thinker and a powerful writer of a thoroughly religious spirit. To be a leader of men, especially in Scotland, seemed to be his hereditary right and natural vocation; but his philosophical temper, and the want of an apprenticeship in the House of Commons, stood in the way; and he never hesitated when the choice lay between the satisfaction of his own reason or conscience and any object of ambition. His first Duchess, Elizabeth, daughter of the second Duke of Sutherland, showed

[1] As to this, I referred to St. Paul (Romans i. 19, 20; and ii. 14, 15).

great kindness to myself and mine: I saw her for the last time at Inveraray in 1877. She had been for some time in failing health; and, in less than two months after we had been there, a fire took place, which destroyed a great part of the Castle. She and all the other inmates escaped unhurt; but she probably suffered from the shock, and on 25th of May in the following year she died. Some years later, the Duke of Argyll wrote me a letter announcing a New Year's gift, which I hope future owners of Blackmoor will value, as I do.

MY DEAR SELBORNE—I write to wish you and all yours a very happy New Year. . . . You may recollect, when I was at Blackmoor in June 1881, I took a little pencil sketch of the view of Wolmer Forest which one gets from the terrace walk to church from your house, with which I was much struck at the time. My sketch was subsequently mislaid, and until very lately I thought it was finally lost. The other day, I came upon it; and, having at once set to work upon it, I have just finished with the last day of the old year an oil picture of the view. It is at least faithful to my very vivid recollection of one of the most beautiful views I have seen in England: and I should have been very glad if I had been able to send it you on the first day of the new year. But I am obliged to wait a little to let it dry before sending it to be framed. . . . The late Duchess had a very great regard for you, and a great admiration always of your political speeches, as well as sympathy with your point of view: and I shall be glad if you will consider this little picture as a memorial of that friendship.

On our way South from Inveraray, in 1877, we paid a visit to my wife's cousin, Lady Halifax, at Hickleton. Lord Halifax (who was himself distantly related to a branch of my own family) was a kindly, honest man, clever and acute, and of a well-balanced

judgment. These qualities gave weight to his opinions in council; but a weak voice and bad manner prevented him from being very effective in Parliament; and in 1877 his career was near its end. His life had been devoted to politics more than ecclesiastical or literary interests; but to these he was not indifferent. He had taken the highest honours[1] at Oxford; and a younger brother of his, Samuel Francis Wood, whom I knew well during the early years of my London life, was a Fellow of Oriel, an intimate friend of Newman and of Frederic Rogers,[2] and among those in whom the ascetic tendencies of Newman's teaching were most strongly developed. The influence of his character must have been felt by his brother, though not like him; he died early, in 1843. In the next generation, his mantle seemed to fall upon Charles Wood, Lord Halifax's eldest son,[3] whose personal qualities commanded the affection and respect, not only of those who agreed with, but of those who differed from his controversial views.

At Hickleton in 1877 we met John Bright; and I remember a walk with him alone in the woods there, when we talked without reserve upon religious subjects. He had a firm belief in Christianity, rejecting the agnostic line of thought with characteristic decision. He spoke simply and earnestly, as a man with whom faith was practical, and whose views of Christian doctrine were more definite than those

[1] A double-first class in classics and mathematics.

[2] Afterwards Lord Blachford.

[3] Now (1890) second Viscount Halifax.

often found in the sect to which he belonged. That conversation enabled us to understand each other better than before.

Early in 1878 my brother Edwin accepted the Archdeaconry of Oxford, with a Canonry of Christ Church; giving up the Professorship of Latin and Fellowship of Corpus, which he had held for eight years. That year was also marked by the death of several of my friends, besides the Duchess of Argyll, of whom I have already spoken; among others, Lord Russell, Lord Chelmsford, and Lady Hatherley. But the loss which I felt most was that of Bishop Selwyn, who died on the 11th of April, worn out by work, not years. I stood by his grave in the Cathedral yard at Lichfield in the following Passion Week; returning to London from the funeral with Gladstone, who revered him as I did. "Four-square, without flaw,"[1] might be said of him, if of any man. His intellectual gifts did not amount to genius; his ethical and practical gifts did. They were stamped upon a countenance, full of spiritual as well as physical beauty, almost unique in its combination of firmness and serenity, of masculine energy and wise gentleness. They were realised in work of the best kind, from the first freshness of his manhood to the close of a life which left no promise unfulfilled, which shrank from no labour, and was marred by no weakness.

When Gladstone and I met in the Easter week

[1] ἀληθῶς ἀγαθὸς καὶ τετράγωνος ἄνευ ψόγου (Aristot. *Eth. Nicom.* I. x. 11).

after his funeral, to take part in the proceedings at Keble College upon the opening of its new Hall and Library, we did not speak, but I have no doubt we both thought, of Bishop Selwyn. I had to propose the health of the Bishops, who were well represented there by Oxford men, from English, Colonial, Indian and missionary dioceses. Cambridge was not so represented; it was impossible not to think of the representation which she might have had, if the greatest missionary Bishop of the Church of England had been with us.

My son's school-time came to an end in the summer term of 1878; he left Winchester, with a good name and good hopes; and on the 11th of October was matriculated at University College, Oxford. Among his companions there, during the time of his residence, were the two eldest sons of Lord Salisbury, with whom, in due time, he was to add the relation of brother to that of friend.

I had been elected Lord Rector of St. Andrews—the smallest, but in its associations not the least interesting, of the Scotch universities—in the autumn of 1877;—my friend Principal Shairp, then Professor of Poetry at Oxford, had promoted my election. In November 1878 I visited St. Andrews (where we were the guests of Principal Tulloch) for the purpose of delivering the usual Inaugural Address; which I did on the 21st of that month. I do not know how it may be with others, but to me it was impossible not to desire to put the best that I could before the young men whom I addressed. I bestowed, therefore,

some time upon the preparation of what I had to say, and gave expression in it to some of my most genuine thoughts and feelings. It was well received, both by my audience and elsewhere; and some, who recognised in it more than a fugitive intellectual exercise,—among them the Duke of Argyll, Mr. Tennyson, Principal Shairp, my brother Edwin, and Lord Blachford,—rewarded me by strong words of approval.

I will not repeat what I said in that Address upon ethical subjects, or as to the study of Language, Mathematics, or Poetry. But as, in the outset of this chapter, I have given a place to kindred thoughts published earlier in the year, I do the same here to the suggestions on some great questions connected with Natural Science and the mysteries beyond it, which I ventured to offer for the benefit of the students of St. Andrews.

The title of Natural Science to a prominent and honoured place in any worthy course of academical study is now universally recognised. Associating itself with and colouring (as it does) other branches of philosophy, its great practical importance and growing popularity call for careful discrimination between those processes and results which are truly scientific, and speculations which may pass current under that name without having a real claim to it. It is inevitable that such speculations should often deviate from the proper field of experiment and observation into regions where experiment and observation are impossible. . . . If it is right, in following the track of scientific investigation, to put aside all mere prejudices which may stand in the way of the honest reception of evidence, it is also right to be watchful against the inroad of other prepossessions, of an opposite kind. Every paradoxical or destructive philosophy has attractions for some minds, from sympathy with the courage which faces the consequences (often inconvenient, sometimes dangerous) of

hostility to received beliefs. It is, however, obvious, that such an attraction may be unfavourable to the distinction which ought always to be made between a polemical temper and one reverent and loyal towards truth. . . . Truth (which is the one thing to be cared for) will no doubt in the end prevail. But it does not prevail with every man. Shipwreck may easily be suffered in the search for it, if it is undertaken in an impatient spirit. With minds off their balance, inconclusive arguments, confidently presented and reiterated, very easily pass for proofs. The history of human thought is full of baseless speculations, which, nevertheless, in their day attracted crowds of enthusiastic disciples. . . . The pliancy of young, and the levity of indolent minds; the eagerness of some for emancipation from fetters of every kind, even from the laws of liberty and reason; the interest of novelty; the authority acquired by leaders in every movement, and the not always tolerant use which they make of it; the mutual admiration, from which scientific circles are not exempt; the multiplication of voices, which, even when they are but echoes of each other, sound like cumulative evidence;—all these influences surround the region of discovery with an artificial atmosphere, and make the discrimination between true discovery and its counterfeits difficult. . . . Scepticism, as well as religion, has its dogmatists, its sectaries and zealots, even its idolaters. And unlearned and occupied men, in scientific as well as other departments of thought, must inevitably take upon trust many things which they cannot verify for themselves. . . . In this subject-matter, the test of truth is experiment; and every theory which goes beyond the limits of experiment, or of just logical deduction from it, is incapable of verification, and at best can belong only to the region of probable truth. It may, or it may not, furnish convenient symbols for particular mental operations; it may, with greater or less plausibility, seek to measure, from the standing-point of our actual knowledge, the past or future possibilities of the universe. But what is material to observe is, that when it makes these attempts it passes beyond the bounds of science, properly so called. . . .

It should, therefore, be a first principle in all such inquiries, to begin with a right conception of what Natural Science can, and what it cannot do. It can collect, classify, and compare

phenomena; it can note their succession and order; it can decompose the subjects of sense into some of their elements, and can trace those elements through many permutations and combinations of substance and form; it can to some extent measure, excite, and make use of the mechanical, chemical, and other forces, on which their structure, arrangement, growth, and other changes depend. To all these things it can give names, convenient as signs and symbols. But what the things so observed and so named are in themselves—what matter is, what force is—no philosopher can tell us. When we have measured the distances and weighed the masses of the heavenly bodies; when we have tested by the spectroscope the materials of the sun and stars; we are still on the outside of things. If we sometimes seem to penetrate below the surface, it is only like children who unpack nests of Chinese boxes, or peel off the coats of a bulb. . . . And, as it is only through impressions made upon our inward consciousness that we are brought into sensible contact with any part of this wonderful world, so it is only through the moral judgment of the same consciousness that we understand the impressions thus made upon us to be faithful, and trust to them as conveying a true knowledge of realities external to ourselves. Matter without mind would be to us nothing; it is through mind only that matter is perceived.

As Science cannot tell us anything of the essential nature, so neither can it inform us of the ultimate cause of any of these things. Every moment's experience, and all the results of investigation, concur to show that everything in the world has not been from all eternity exactly as it is now; that there are causes and effects,—a series of changes, depending on laws, or some law, of causation. Science may trace, link after link upwards, some small part of the chain which thus hangs down from Infinity; but how that chain came into existence, what began and what sustains it,—on these points science is, and must continue to be, silent. The atomic or world-dust cosmogony is not more satisfactory or more intelligible as an explanation of ourselves and of all the varieties of Being, Form, and Force, which we see around us, than the Chaos of the ancients. The question, "And Chaos whence?" still inevitably recurs.

The speculations of natural philosophers, even after their

boldest flights, fail to throw the faintest ray of light upon the transition from inorganic matter to vegetable life, upon animal life, consciousness, and instinct, upon reason and the moral sense in man. Are these realities, or not? Do they, or do they not, belong to a higher system, to a greater world, than that of physics, mechanics, and chemistry? No analysis of the material structures with which they are connected has any tendency to explain how they came to be, or why they differ as they do. All the suns and planets of the universe, supposing them to be without life or reason, would be but multiples of the things over which Reason reigns; of those particles of dead matter, which man cannot but believe to be immeasurably below himself. How can any theory of existence be sufficient and satisfactory, which has nothing to tell us about this higher order of facts, which confesses itself blind and impotent in its presence? Whatever else is credible, this at least can never be believed, that man's moral nature tells him a false tale; that all his sense of freedom and power, all his self-knowledge, self-criticism, discernment between good and evil, is a kaleidoscope of the brain, a phantasmagoria of illusions. Many poisonous vapours may float in the social atmosphere; but none, surely, can be worse than that which would suggest doubt or unbelief of everything which cannot be tasted, handled, or seen. It is disbelief not in God only, but in Man. Not in the sphere of religion only, but in those of morals and politics, it leaves our human life without rudder, chart, or compass. . . .

Here it is that Religion comes in. I will not trespass at all upon the proper province of teachers of religion; but to be silent as to the keystone of the arch of human knowledge and virtue is not possible. . . . Religion harmonises the inward world of life and consciousness with the outward world of sense, ascribing all to one great Cause, which, if our knowledge of it is but as a tangent to Infinity, still realises the highest conceptions and aspirations which man can form, impersonating the supremacy of perfect Reason. In a moral and intelligent author of the Universe, of absolute power, wisdom, and goodness, Reason finds the explanation and the archetype of itself, nowhere else discoverable. Infinity and Eternal Self-Existence are transcendent Realities, which it is impossible to understand, but

in which, under one hypothesis or another, belief is absolutely unavoidable. The alternative is between intelligent and unintelligent self-existence. If it is against nature to persuade a man that he is not superior to a piece of iron or a stone; not less evident, as it seems to me, is the superior reasonableness of an account of the origin of all things, which makes them emanate from and depend upon supreme and perfect Reason, over one which derives everything from developments, supposed to be spontaneous, of brute inorganic matter,—of matter supposed to be governed by laws, and yet to be without a lawgiver. The more we dissect, analyse, decompose, the more mastery we obtain over the elements of matter, the more irresistible (to my mind at least) becomes the conviction that there is a higher and greater Power behind them. Those who recognise the idea of "Force" as necessary to be added to the idea of matter, in order to account for the existence and the known conditions of the Universe, bear testimony to this truth, though they fail to explain it. To me (I trust to my hearers also) the presence of that Power is a revelation of God. . . . Nature leads men who know no revelation *viam palantes quærere vitæ;*[1] to seek the Unknown, by "feeling after Him, if haply they may find Him."[2] That cannot be true science, which, on this the most important of all subjects, would lead those who believe that they have found Him back to blank ignorance, and teach them to "care for none of these things."

You will hear, nevertheless, from some who think themselves wise, that these things are "unknowable." A dogma which denies the possibility of the knowledge, seems to me to deny also the possibility of the Being, of God. It is implied in any reasonable conception of the Author of the Universe, that He is "not far from every one of us."[3] It cannot, on that supposition, be unreasonable to believe, that the same law of human nature which enables us to acquire other knowledge, may, from a contact real, though not visible, enable us to acquire some knowledge of Him also. His means of making Himself known to His intelligent creatures must be as boundless as His presence and power. All human knowledge is partial, deter-

[1] Lucretius, lib. ii. 10. [2] Acts xvii. 27. [3] *Ibid.*

mined by the conditions of contact between our nature and that which is external to us; reaching our minds, as a rule, indirectly; and always coloured by the media through which it comes. . . . On natural principles, what is not an objection to the lower cannot be an objection to the higher knowledge. And what is the evidence of facts? That faith in God is a real power in the world, by which the lives and characters of multitudes of men and women have been, and are being continually formed, and that such men and such women have been and are "the salt of the earth," are facts which cannot be denied. Everybody knows examples of them; and what is in that respect our own experience has also been the experience of ages. There is no other kind of knowledge, the truth of which is attested, in the same manner and degree as this, by its moral fruits.

[In this Address Lord Selborne pleaded the claims of the Classics to retain the principal place as instruments of culture in its deepest and widest sense; and in dwelling upon the moral side of education, he held before the students not the ideal of worldly success, but a career "the greatest, noblest, happiest," . . . "consistent with poverty and obscurity, but closed against importunate desire"—of which George Herbert's *Honest Man* and Wordsworth's *Happy Warrior* were quoted by him as true ideals attainable by all; and he emphasised his opinion that the formation of character was an even greater work of a University than scholarship, learning, and science.]

CHAPTER XX

DEATH OF MY BROTHER WILLIAM, 1879—HIS LIFE AFTER HIS ECCLESIASTICAL CHANGE

The last time that I saw my brother William was at Blackmoor, in October 1878; when he read, and approved, the Address which I had prepared for the students of St. Andrews.

In the first part of these *Memorials* I have given an account of the two earlier periods into which his life, before he left the Church of England, was about equally divided,—that of his education, and that of his ecclesiastical investigations (I might almost call them adventures), which ended, in the spring of 1855, at Rome. He never ceased to maintain that principle of Church authority, as the ultimate rule for individual reason and conscience in controversies of faith, which he had endeavoured to realise in the Anglican and Oriental Communions, but which he found nowhere consistently acted upon, except in the Church of Rome. After joining that Church, his mind was at rest; but he did not think it necessary to press his convictions upon others, so as to make intercourse

with them painful, and in reply to a letter from myself, in which that subject was touched, he wrote :—

As for us, my dear brother, I share your feelings thus far, that I have the greatest and most comfortable feelings of moral assurance of the innocence or veniality of the *animus*, and state of separation from the Roman Catholic Church, in which not only those we have ourselves known and loved, but multitudes of others, and of various other Protestant denominations besides Anglicans, have lived and died, and may still live and die. But I hope you will ever be cautious and jealous over yourself, how you seek satisfaction to your own conscience from the virtues and excusing circumstances,—not exactly identical with your own,—of others. We must be judged from our own talents, circumstances, and opportunities, and not from those of others.

His winters were spent in Rome, and his summers generally in England. His manner of life at Rome is described in a memoir of "Mother Henrietta Kerr,"[1] who was for six years a sister in the Trinità Convent there, and in whom (as her biographer says) he "took a fatherly interest, serving her in any way he could, with a minuteness of detail and delicate thoughtfulness that were characteristic of all his intercourse with his friends.

His life, solitary as far as intimate companionship was concerned, was passed among his books, in the suite of rooms he occupied, first as a lodger, then as proprietor, on the third floor of an old palace in the Piazza Campitelli. He lived there with his only servant, "Liberata," a bustling, honest, shrill-tongued Italian ; a countess, too ; for the old count to whom the rooms belonged, the last of a long line that had fallen at length

[1] The daughter of one of his most attached friends, Lord Henry Kerr, second son of the sixth Marquis of Lothian ; who, like himself, had left the English for the Roman Church. She was, when she died, Mother Superior of a Convent at Roehampton.

from wealth and position into extreme poverty, on the death of his first wife had married this woman, who made him a faithful and devoted nurse in his old age. To save the poor old count from the consequence of his inability to pay the rent of his rooms, and to keep together the remains of the family possessions which still clung to him, Mr. Palmer had become the proprietor of all, and gave him a shelter till his death. Then, as there were many more rooms than he required, he often invited his friends to occupy them;[1] for, solitary as he was by choice, his warm heart and wonderfully unselfish devotedness to others had gained him many friends. Far away from the Piazza di Spagna and the gay quarter occupied by visitors to Rome, this old house, upon the confines of the Ghetto, seemed to belong completely to the past."[2]

His reputation as a scholar and antiquarian, and the friendships he had made in Russia, attracted to him many of the English and Russian visitors to Rome, not only those who had known him, but strangers also; and, although the interruption caused to his studies was often inconvenient, he gave up much of his time to those who so resorted to him.

Besides the annual visits which he generally paid to England, he spared no trouble in travelling to any part of Europe where he could obtain information useful for any literary work in which he might be engaged; and for this, among other reasons, he was

[1] He did more than this; it was no uncommon thing with him to give up his own bedroom, and whatever else might be most for their comfort, to sick and dying members of the families of his friends, even when their dispositions were not particularly congenial to his own.

[2] *Memoir* (edited by John Morris, S.J., Roehampton, 1887), p. 149. Henrietta Kerr, in a letter to her father (5th February 1872), relating how he had escorted her at a moment's notice from Rome to Lyons, called him "that incomparable Mr. Palmer" (*ibid.* pp. 219, 220).

several times drawn to Russia. That a man should pursue disinterestedly, and without ulterior motive, such objects as those with which his mind was occupied, was a mystery to some persons in Russia, as well as elsewhere.

I have mentioned in the first part of these *Memorials*[1] his earlier visits to that country, and that an official writer, in a Russian work published by authority, attributed his proceedings at Constantinople in 1851 to a political intrigue of Lord Stratford:—nothing could be more remote from the truth. At the time referred to, William was the guest at Constantinople of M. Titoff, the Russian Ambassador to the Porte; he was seeking, not the further division, but the greater unity, of Christendom; he differed from the political ideas of Lord Stratford; and he was then and always a well-wisher to Russia, and disposed to do her what most Englishmen would have considered more than justice. Among his most intimate friends were the Russian Admiral Count Poutiatine and his children. Count Poutiatine was a man of principles kindred to William's own, steadily attached to the Russian Church, and an officer of great merit. He was, in 1858, Admiral and Russian Plenipotentiary in China, acting in co-operation with Lord Elgin. My brother visited him at St. Petersburg in the summer of 1861, when he was Minister of Public Instruction there; and twice (in 1868 and 1870) at his country house of Gleboro in Podolia; and again at St. Petersburg in 1876, when the signs

[1] *Memorials*, Part I. vol. ii. p. 122.

of coming war were thickening. Two of the count's sons, Eugene and Augustine, were at that time bent upon joining the Servian army. But Augustine, the younger, fell ill of consumption, and had to winter in Rome, where he, and several others of the family who accompanied him, lodged in William's apartments; and there he died.

William's literary work, during the twenty-four years of his residence at Rome, was in bulk, costliness[1] (considering his means), and disregard of all arts of popularity, very remarkable. The central idea of almost everything which he wrote was the relation of the Church to the world, the Spiritual to the Temporal Power. From 1855 to 1860 he was occupied chiefly with two subjects,—Egyptian Chronology and Early Christian Symbolism.[2] While in Egypt in 1853, in search for a manuscript relating to the history of the Patriarch Nicon, an accident turned his attention to Egyptian chronology. From that time he pursued the study, visiting the Egyptian collections in the principal Museums of Europe, and entering into communication with Lepsius, Brugsch, Mariette, De Rougé, Dr. Birch, and Sir Gardner Wilkinson.

[1] He had a great dislike to the cheap paper of the day; all his books were well printed, in clear type, upon paper of the best quality.

[2] His careful study of the Roman Catacombs led him to bring together, from different sources, a series of fourteen Christian compositions, selected and arranged by himself; to which were added in an Appendix, by way of contrast, three others, heathen or Gnostic, describing them in a little book, entitled *Introduction to Early Christian Symbolism;* this he published in Paris in 1861. Cardinal Newman, to whom these (among other things) were bequeathed by his will, gave the originals to me; they are now at Blackmoor.

One thing is certain. He believed he had made a real discovery, that he had found a clue to the reduction of the vast number of years derived from the hieratic lists of Memphis and Thebes. The book is throughout very hard reading, and is disfigured by a good many errors of the press (sometimes in figures), besides those of which notice is taken in his "Notes and Corrections" at the end of each volume; but it deserved more attention from those acquainted with the subject than (so far as I know) has ever been bestowed upon it. This, it is clear, he felt himself. He wrote: "English, certainly, is not the language through which any such contribution to learning ought now to be given to the world"; and on the cover of his *Commentary on Daniel*, in a Latin notice of the place in Rome where his *Egyptian Chronicles* were on sale, he said:—

These two volumes, which were printed at the author's expense, and cost him about £600, had on their title-page the names of Messrs. Longman as publishers. They, however, soon reported that the book found no purchasers, and that it did not suit them to keep on hand an unsaleable work.

"If, therefore, there should now be any one who would rather inquire of the ancient Egyptians themselves of their tradition, than follow Germans who invent history arbitrarily according to the fertile subjectivity of their own minds, he may obtain these *Chronicles* for 12s. from Messrs. Trübner and Company of Ludgate Hill, London."

He was an attentive and sagacious observer of public events passing around him; looking at them (as he did at everything) mainly from an ecclesiastical point of view. After the annexation of the Papal

Legations, and the assumption of the title of King of Italy by Victor Emmanuel, he wrote to his sister-in-law, Mrs. Horsley Palmer :—

Looking at the matter from an abstract point of view, I suppose there is scarcely any room for difference. It is as you say; we have naturally more sympathy for the pure and persecuted, than for the mixed and dominant, Church. But that has little to do with the practical question. It is the will of God, and no doubt most for His glory and the good of mankind at large, that the Church should exist during successive ages in a number of different states and combinations with the world. No doubt, the abstract inward Church is pure and beautiful and glorious from first to last, and is at all times equally opposed in its nature and energies to the world, the flesh, and the devil. But let us consider for a moment what we should be desiring, if, for the sake of having the Church always more picturesque and attractive, we were to wish that she could have remained always persecuted, as in the third century. It is true, that then professed Christians were in a manner all Saints, and that they were broadly and sensibly marked off from the world, and opposed to it; and the spectacle of this conflict is sublime, and very attractive to our better feelings. But, in the meantime, what was the condition of the millions, of the vast majority of the inhabitants of the Roman Empire? It was this, that they were generally slaves of worldly and Satanical traditions and powers, and were not even in contact with Christianity. When, on the other hand, the Church triumphed outwardly over the world, and the world with all its hostility outwardly submitted and entered into the Church and combined with it, the Church, no doubt, lost much of her *visible* spiritual glory, and the form of her warfare was changed; but *humanity* gained beyond expression. For, from that time, all who were born in the Christian empire were in close contact with Christianity, from their births to their deaths. So, as time went on, when the hypocrisy and moral corruption of particular nations (as of France) became greater and greater, till at length the nation and government threw off the national confession of Christianity, the Church, which had seemed to be under an eclipse before the Revolution,

shone out with great spiritual power and brightness after that storm had passed. And now the clergy of France, being very poor, and generally very exemplary, are much more capable of contending with a worldly tyrant than the clergy of Italy, where the Revolution has not yet had its full course. But, while the Church of France, as a spiritual power, has gained much in the eyes of all by having been thrust down from its former dominant position, and separated from that majority which is the world, humanity has suffered a most fearful loss, a loss which probably can never again be repaired. And now in France the majority of the higher and middle classes are so under the influence of irreligious traditions of society and government, that vast numbers are scarcely in contact with the Church or with Christianity. The same considerations may be applied to England. Setting aside the question of any heresies or schisms, and considering only the question of the *Establishment* of religion which is attacked by Protestant Dissenters on this ground (among others), that it is really a corruption of religion, and that religion is purer and more spiritual when it is voluntary, there is much truth in what they say; and no doubt any sect, whatever it be called, that has any belief of its own, will show more favourably the less it is mixed up with the hypocrisy and corruption inseparable from the possession of worldly power or pre-eminence. But, if the Establishment were destroyed, as they would wish, to-morrow, the spiritual religion which they oppose to it would be quite unable to take its place, and the masses would be thrown out of contact (altogether, or in a great measure) with religion. Therefore it is, that men of understanding, who are members of an Establishment, though they well know that the spiritual power of religion is damaged and obscured by it, are far from assenting to the cry for its destruction. It is on the same ground (though the conflict is on a far greater scale) that the Pope and the Catholic hierarchy will never be themselves promoters or abettors of that change to which the European world has long been tending. The Church will probably lose its temporal power and position, and by the loss will no doubt gain some great spiritual advantages; but the world, and the numerical majority of mankind in the same countries, will suffer a great and irreparable loss, which no good and faithful shepherd can desire.

His conjectures as to the future of the Papacy, and the end of the Ottoman Empire, in a letter to our brother Edwin in November 1870, may perhaps interest some. He writes :—

Ten years ago, some mention was made in the papers of giving the Pope Jerusalem instead of Rome, even with a temporal Principality; which there would conflict with no interests of "civilisation." On this Archbishop Manning observed, "They want to send him to Jericho." I used to say that I thought Jerusalem a likely place, if there was to be another exile of the Papacy, as once before at Avignon. And, as for the Turks, it is a favourite idea with me, that their time (or rather the time of the infidel Gentiles trampling under foot Jerusalem for 42 months, or 1260 days,)[1] is drawing near to its close, and may probably come to an end about 1879 or 1897; and that, perhaps, both these points (or thereabouts) may be marked by events which together may be the end of the Turkish Empire at Jerusalem. If only one of the two dates is to be chosen, I should expect rather to see the end (or that your boy should see the end) of the Turks in 1897; the 1260 days being, in that case, put for as many solar or Julian years,[2] such as we now use. I have always thought—first as a Protestant, and then as a Catholic—that the temporal power of the Papacy, as well as the Mahometan Empire, was drawing to its close; and, in one way or another, all parties seem to have felt this. I also have been inclined to think, ever since I have been a Catholic (for I do not think the parallelism had occurred to me before), that the "times" (plural) "of the Gentiles"[3] are distinguishable into two distinct but great measurements—whether coinciding exactly in the years of their beginning and end is another question—each consisting of 1260 years: one for the unbelieving Gentiles, who trample under foot the Holy Places in the East; the other for the believing Gentiles, in whose "wilderness," outside of the Holy City and Land, the Church "has a place prepared for her," and is fed, or nourished,

[1] Daniel vii. 25; xii. 7. Revelation xi. 2; xii. 6, 14; xiii. 5.

[2] Reckoned from the Conquest of Jerusalem by the Caliph Omar, A.D. 637.

[3] Luke xxi. 24 (καιροὶ ἐθνῶν).

from the face of the Dragon. And not only is she *fed*, but she also *reigns* among the believing Gentiles. And now, one may say of both alike—of the Mahometan Gentiles, and of the Pope—that they have reigned, the one at Jerusalem and the other at Rome, in the East and in the West respectively, for more than twelve centuries; and both seem now getting near to their end. Suppose, then, that after a time the position of the Pope at Rome becomes plainly untenable, and he moves, let us say, to Malta. If he, or he and his successor, stay there ten years or more, the English may begin to think that, while his temporary presence as an exiled Sovereign and guest at Malta is merely inoffensive, his establishment under our sole or joint protection at Jerusalem might be even conducive to our political interests, and might tend to the promotion of order and civilisation in the East. I do not mean that we should be at all likely to think of dispossessing our friend the Turk at Jerusalem in order to make room for the Pope; but whenever an opening was made, or seemed to be at hand, through the breaking out of the Eastern question, *then* the idea would not be, I think, at all an unnatural one. But to restore him and keep him by force of foreign bayonets at Rome, unless Italy falls to pieces and the excesses of the Republican party provoke and facilitate such a reaction, seems to me very difficult. Even now, in September last, in his small army, he had but a bare majority of Romans and Italians: and, after the transfer which has now been made, he would, upon a restoration, be probably weaker than before. Notwithstanding all this, if I were a Jew, I would prefer to lend money to the Pope, as Sovereign, even at this moment, to lending it to the Kingdom of Italy.

William's largest and most laborious work, entitled *The Patriarch and the Tsar*,—upon the life and sufferings of the Patriarch Nicon, and their sequel in the history of the Russian Empire,—was published[1]

[1] It is in six large 8vo volumes, containing altogether (with preface, etc.) more than 4000 pages. The first volume was published in 1871; the two next in 1873; and the three last in 1876. The seventh was never accomplished.

during the six years following 1870. At the time of his death he was engaged in other works.[1]

He wrote to me on the 15th of November 1878, asking for introductions to the British Consul-General at Cairo, and saying that he thought of going to Egypt that winter, for a month or perhaps more, "before printing an Egyptian volume which he had ready for the press." He was then suffering from his usual malady, gout: and said nothing of any other ailment. But in his next letter, dated the 30th of November (the last which I received from him), he spoke for the first time of a pain in the heart, to which he was subject after walking or any mental excitement, but to which his physicians did not seem then to attach serious importance. In another letter (18th December 1878), he spoke of a visit to the mounds of Tanis, as his main object in proposing to go to Egypt; but doubted whether he would be equal to the walk of a quarter or half a mile which it would require. On the 11th of February 1879, he reported that his physicians had forbidden his going to Egypt, or travelling at all without necessity:—but that his book-making was nevertheless going on briskly.

I am printing in Latin a sort of compendium of my *Egyptian Chronicles*, and have already printed 144 pages. When it is finished, I mean to return to Nicon, and get all those materials which I have ready for my last volume into a state fit for sending to the printer. Else I have two other Latin works ready for the press here; one, a history of Egypt illustrated from

[1] He contributed a chapter on the Egyptian obelisks at Rome to Mr. John Henry Parker's work on *Roman Archæology*, published in 1876 (vol. iv. ch. 1).

the monuments and from chronological tradition; the other, two "paradises," or forms of prayers, composed by Nicon in 1646, against the Turks and the Schismatics.

His last letter was written about a fortnight before his death, and showed no abatement of activity. It was to a friend of many years, like himself an Oxford scholar of considerable note, and a convert from the English Church,—Thomas William Allies; in whose house, in Portman Street, he had rooms of his own, which he made his London home.

My *Enchiridion Chronologicum* (he said) will make, I think, a volume of about 340 pages. I had meant to have printed next some Latin *Niconiana;* but the Censor, though he said I might print it at the Propaganda Press, would give neither *Imprimatur* nor *Nihil obstat*—whereas part of my fancy was, that Russian readers should see that such writings and sentiments as they degraded and imprisoned Nicon for are not unfavourably regarded at Rome. But there are many ins and outs in people's ways of looking at things which are new to them, and which they do not fully understand.

He took to his bed about a week after this letter was written; but continued, almost to the last, to go on with his work. Father Armellini,[1] his confessor, who assiduously attended him, found him in the forenoon of the third of April out of bed and engaged on the proofs of the Compendium of his *Egyptian Chronicles;* and could not succeed in dissuading him from that labour, though manifestly beyond his strength. On the same day, he felt himself in danger, and telegraphed to our brother Edwin to come to him at once from Oxford: and on the 5th of April, before

[1] Son of one of the Triumvirs of 1848.

it was possible for Edwin to arrive, he died. Of the English then at Rome, several (among whom I may name Lady Herbert of Lea, Mrs. Hutchinson, Mrs. Foljambe, and Dr. Campbell, the Rector of the Scots College) did all that was possible for him in his illness. Lady Herbert was herself with him to the last, and brought a Sister of Charity to nurse him, who had before nursed Augustine Poutiatine in his house. Edwin, who lost no time on his journey, came the next morning,—the morning of Palm Sunday. On the 8th of April, after a service in the Church of St. Maria in Campitelli, his body was committed to the ground in the cemetery of San Lorenzo. A small pillar, surmounted by a white marble cross, with a simple inscription, now marks the spot where it rests.

Many testimonies were borne to his virtues, and to the regard in which he was held at Rome. No ascetic or inmate of any religious house could have been more exact in the observances of religion; his charity and patience were unbounded; his disregard of every self-centering consideration absolute. Between him and Cardinal Newman there was a strong mutual affection. When William, in 1876, sent him the last two volumes of *The Patriarch and the Tsar*, Newman wrote:—

MY DEAR PALMER—I thank you for your two additional volumes, and I congratulate you on the completion of a work, which may truly be called, not an ἀγώνισμα, but a κτῆμα ἐς ἀεί,[1]

[1] Thucydides, lib. i. 22 — (translated by Jowett: "My history is an everlasting possession, not a prize composition which is heard and forgotten").

and is more truly dedicated to eternity than the history of Thucydides could be, as being an offering to that God who dwells in it. For such books as yours a Collegiate or Monastic Library is the appropriate place, and we shall be proud of having it in ours.

And in the Preface to the "Notes" of William's *First Visit to the Russian Church*, which the Cardinal published in 1882, he said :—

"I cannot disguise from myself that, to common observers, Mr. Palmer was a man difficult to understand. No casual, nay, no mere acquaintance would have suspected what keen affections and what energetic enthusiasm lived under a grave, unimpassioned, and almost formal demeanour. To unsympathetic or hostile visitors he was careless to defend or even to explain himself or his sayings and doings; and he let such men go away, indifferent what they might think or report of him. They would have been surprised to find that what in conversation they might think a paradox or conceit in him was, whether a truth or an error, the deep sentiment and belief of a soul set upon realities and actuated by a severe conscientiousness. But, whatever might be the criticisms of those who saw him casually, no one who saw him much could be insensible to his many and winning virtues; to his simplicity, to his unselfishness, to his gentleness and patience, to his singular meekness, to his zeal for the Truth, and his honesty, whether in seeking or in defending it; and to his calmness and cheerfulness in pain, perplexity, and disappointment. However, I do not pretend to draw his character; apart from all

personal attributes, he was to me a true and loyal friend, and his memory is very dear to me."

The judgment of those who knew him intimately from his early days, but neither preceded nor followed him in his change of communion, was the same. Bishop Claughton said and wrote: "He was one of those of whom we may say, that the world was not worthy of him, nor fitted for him, nor he for it. His thoughts were out of the range of other men's thoughts." And Bishop Wordsworth, of St. Andrews: "The ablest of all our contemporaries at Oxford, as dear Walter Hamilton[1] used to speak of him; and he might have added, I believe, with truth, no less good than able. Surely, there was also something mysterious, of which we shall know more in another world, that so much ability and so much goodness does not seem to have made its full mark, or found its worthy and proper place in this present life." This was said in 1879, when his loss was recent. I add a few more words from the same hand, written more than twelve years later:—"His mind was a Gordian knot, which no one could untie; and I think that he himself, at the last,[2] cut it rather than untied it. His views took too wide a range to be brought within the practical scope of individual endeavour: but, though he was ever straining after an ideal beyond his reach, he was careful and conscientious about the duties of everyday life, and with

[1] Who died Bishop of Salisbury, in 1869.

[2] *i.e.* when he left the Church of England.

his head in the clouds did not neglect τὰ ἐν ποσί.[1] *Ingrediturque solo, et caput inter nubila condit.*[2] Had he lived in days of old he would have made a splendid Stoic; another Seneca, but without his hollowness and inconsistency."

The thought, that the fruit visibly borne in this world is not always in proportion to a man's gifts and virtues, is one which my brother's history could hardly fail to suggest to those who knew him well. To lives like his, Milton's lines about the plant "of divine effect," but to the world generally "unknown, and like esteemed," whose

> leaf was darkish, and had prickles on it,
> But in another country . . .
> Bore a bright golden flower, but not in this soil,[3]

might be applied. Or, perhaps, that passage of Plato, in which Socrates speaks of the man, who, having tasted of philosophy, and knowing "the sweetness and blessedness of the possession," and seeing the general prevalence of evil among those who concern themselves with this world's affairs, "holds his peace, and does his own business," and "is like one who retires under the shelter of a wall in the storm of dust and sleet which the driving wind hurries along; and, when he sees the rest of mankind full of wickedness, is content if only he can live his own life and

[1] "The things at his feet."

[2] Virgil's well-known line, as to Fame—translated by Dryden: "Her feet on earth, her forehead in the skies."—(*Æneid*, iv. 177).

[3] *Comus*, *v.* 631.

be pure from evil or unrighteousness, and depart with a good hope, in peace and goodwill."[1]

"And" (said one of Socrates' disciples, thinking doubtless of the master himself) "he will have done a great work before he departs." To which the answer was—"A great work,—yes: but not the greatest, unless he find a State suitable to him."[2]

Such a life may have really borne much more fruit, in a multitude of ways, than the nearest observer of it could know. My brother deliberately renounced what the world calls success, and never sought human praise. But in his devotion to God's service, in the completeness of his self-sacrifice, in his inflexible faithfulness to Truth as he saw it, and in the loving spirit of his intercourse with other men, there was a power, which must have been felt by many hearts and minds; perhaps with effects, in comparison with which the best performances of some, who seem to have done greater things, may be in the balance of a true judgment of no account.

[1] Plato, *Republ.* lib. vi. (I have ventured to alter Mr. Jowett's translation of μετὰ καλῆς ἐλπίδος, "with bright hopes": preferring the singular number of the original).—Jowett's *Plato*, vol. iii. pp. 381, 382.

[2] *Ibid.*—μὴ τυχὼν πολιτείας προσηκούσης.

CHAPTER XXI

THE ROYAL TITLES BILL—FOREIGN POLICY OF LORD BEACONSFIELD'S GOVERNMENT

1876–1879

Of the questions which came before the House of Lords in 1876, those relating to the Royal Titles and to Burials were the most interesting. I reserve what I may have to say of the Burials question for its last stage, when it passed into my own hands. As to the Royal Titles Bill, I must admit that the judgment of those who were, like myself, strongly opposed to it, has not been confirmed by its results. I thought there was danger, from an Indian point of view, in the assumption of a new title which might seem to imply a claim of direct authority over all India from the Himalayas to Cape Comorin. But of that, the Princes of India were the best judges: and the event has shown, that it has not been so understood by them. Other objections, which were founded on sentiment, have vanished before the accomplished fact. Yet the sentiment was one of which no Englishman need be ashamed. The whole dominion of the English Crown,

from remote times, had been called an Empire, and the Crown had been called Imperial, even in Acts of Parliament. To add the title of "Empress" to the Queen's style, and that as to her Indian possessions only, seemed a derogation from, rather than an enhancement of, the historical dignity of the Crown. Nothing of the kind was thought necessary when the government of India was assumed by Her Majesty; that government had been carried on for eighteen years, and during all that time laws had been enacted under the style of Queen;—what need could there be now for change? The force of these objections seemed to be increased by the undertaking which the authors of the Bill gave, that the new style should not be used on occasions or in instruments concerning only the United Kingdom. Why not, if there were good reasons for adopting it at all! It was to the United Kingdom, and to Her Majesty in right of the Crown of the United Kingdom, that the Imperial dominion belonged: any style appropriate to and arising out of that dominion ought to be one which might always and everywhere be used. To assume a new style, and at the same time disparage and discredit it by a local limitation of its use, seemed inconsistent.

These arguments did not receive any good answer. It was a blemish upon Lord Cairns's powers, that he used all arguments, good, bad, and indifferent, which came to hand, like a lawyer who takes every point suggested in his brief; marshalling them with great skill and in the most lucid order, but without

discriminating between those which were substantial and those which were not. He did not think it beneath the dignity of that occasion to quote Debrett's *Peerage* and Whitaker's Almanack, as authorities for the addition of a new title to the Royal style by Act of Parliament. Following him, on the 3rd of April, I said, that he "reminded me of the power which was said to be possessed by one of the noblest animals in creation,—that of picking up, with the peculiar instrument with which it was armed, the largest or the smallest objects." When I wound up my speech, by deprecating any "gilding of the refined gold" of the British Crown, I did not remember the aptitude of the context in Shakespeare; but was reminded of it the next day by Lord Carlingford. The dialogue which precedes the familiar lines to which I alluded is this—

King John. Here once again we sit, once again crown'd,
And look'd upon, I hope, with cheerful eyes.
Pembroke. This "once again," but that your Highness pleas'd,
Was once superfluous: you were crown'd before,
And that high royalty was ne'er pluck'd off;
The faiths of men ne'er stainèd with revolt;
Fresh expectation troubled not the land
With any long'd-for change, or better state.[1]

Those debates were conducted under some restraint, on account of the respect due, and felt by all, to Her most Gracious Majesty whose style was in question. The fact, that the proposal could not have been made without Her approval, was the strongest of all the arguments in its favour. But it was im-

[1] *King John*, Act iv. Scene 2.

possible for Her Majesty's most attached servants not to feel, that their duty was best performed by speaking on such an occasion as they thought. It was certainly not in the spirit of faction or party, that we did so; and there were many who sympathised with us.

It was in the autumn of 1876 that Disraeli went to the House of Lords; and the storm about Bulgarian atrocities then began. The Prime Minister seemed inclined to extenuate them; Gladstone made them his text for fierce denunciations of Turkish misrule; and from that time forward it needed no prophet to see, that he could and would emerge from his retirement, whenever he saw an opportunity of striking a blow at his old adversary. The political situation was not altered by the transformation of Mr. Disraeli into Lord Beaconsfield. Generally, in recent times, the removal of a Prime Minister from the House of Commons to the House of Lords has been virtual abdication. But in this case it was not so. Whatever view one man or another might take of Lord Beaconsfield's character, it could not be denied that he began political life as an adventurer; and his social position was for a long time ambiguous. Not even the romance of success in an extraordinary self-made career, and the great office of Prime Minister in which he seemed to be firmly established, went so far to overcome these drawbacks, as the acquisition of high rank, and of a place in the most aristocratic assembly of the realm. This was the crowning conquest of a wonderful personal history; it gratified his innate taste for prestige and

splendour, without any abatement of real power. Of the colleagues whom he left in the House of Commons, there was no one by whom he ran any risk of being superseded. Sir Stafford Northcote, who succeeded to the lead there, was a man of moderate ambition and perfect honour, discreet rather than brilliant: Gathorne Hardy, who might have aspired to the same post, and who excelled Sir Stafford in some qualities useful to leaders of parties, was a less capable administrator, and took the lower place without any appearance of dissatisfaction.

Wars and rumours of wars occupied most men's minds during the three years which succeeded the summer of 1876: little else was thought of or talked about in Parliament, or in the country. The old Turkish question, liable always, like a volcano, to sudden eruption, then broke out in various forms of disturbance; and feeling ran high against Turkish misgovernment. To that feeling, Lord Salisbury, who represented this country at the Conference of Constantinople in the winter of 1876-77, gave vigorous expression; but it was not clear that the Head of the Government agreed with him. The Conference ended in nothing; war between Russia and Turkey followed, and continued till the signature of the treaty of San Stefano early in 1878. Our attitude was one of conditional neutrality; the conditions were arranged by an interchange of despatches between our own and the Russian Government, in which Lord Derby intimated, that we should not interfere unless for the protection of what we considered British interests;

and the Russian Chancellor defined the objects which his Government might seek to gain by the war, disclaiming any intention of taking possession of Constantinople, and acknowledging the right of the great European Powers to have a voice as to any new territorial arrangements in which the general interests of Europe might be concerned. Nothing inconsistent with those assurances was done. But, as the war went on, the Turks defending themselves (as usual) with obstinacy and courage, a strong reaction of popular feeling in this country against Russia set in; and Lord Beaconsfield's tone became warlike. It was manifest, that in the Cabinet there was a party for peace, to which Lord Carnarvon and Lord Derby belonged; the rest went with the Prime Minister. Lord Carnarvon resigned before the meeting of Parliament; and Lord Derby, who had been for weeks the object of bitter personal attacks in Conservative clubs, coteries, and newspapers, followed him on the 23rd of March; and was succeeded in the Foreign Office by Lord Salisbury. Every movement which brought the Russian army nearer to Constantinople, after it had passed the Balkan, was the subject of sensational demonstrations in the House of Commons, by which the public excitement was stimulated. In February the British fleet entered the Dardanelles: a vote of credit for six millions was asked for and granted; and after the signature of the treaty of San Stefano the Reserved Forces were called out, and seven regiments of native Indian troops were embarked from India for Malta.

There was a debate on the 8th of April 1878, upon Lord Beaconsfield's motion for an Address to the Crown in reply to the Royal message announcing that the Reserved Forces were to be called out; in which I took a part, so little approved by Lord Houghton (a strong anti-Russian), that he whispered into my private ear the good-humoured sarcasm, that the Czar ought to make me a knight of the Order of San Stefano. I could see nothing alarming in the treaty,—nothing inconsistent with the terms of peace which had been stated a year before by Prince Gortschakoff to Lord Derby, as contemplated at that time by Russia in the event of her success.

The terms so stated included the restoration of her former Bessarabian frontier, the cession of Batoum and part of Armenia, the independence of Roumania, and the autonomy of Bulgaria, if the Russian armies should be able to obtain peace without crossing the Balkan: but it was added, that, if the Balkan were crossed, more might be required. The objects of the war, so defined, were not then treated as inconsistent with British interests: why should they now? The treaty of San Stefano was in form preliminary, not final: Russia was willing to enter a European Congress for the purpose of having its terms considered and ratified or varied after full discussion among the Great Powers, on a footing with which all the other Powers appeared to be satisfied: we only were not. If we went to war, we must either retard the independence and frustrate the hopes of those populations to which the treaty, as it stood, was a charter of

freedom, and on which we must ultimately rely for maintaining the balance of power in the east of Europe; or we must take upon ourselves the difficult task of such a reorganisation as would satisfy their aspirations. The Duke of Argyll, taking the same line of argument, added, that, "if the Government were determined to tear up the treaty of San Stefano after all the sacrifice of blood and treasure made by Russia, they would be obliged to go to war without an ally in Europe."

The movement of Indian troops to Malta in time of peace, without the previous assent of Parliament, seemed to myself and my friends to be against the letter and spirit of the laws relating to the military forces of the Crown, and to be open, in point of constitutional principle, to serious objection. I brought that subject forward in the House of Lords on the 20th of May 1878; establishing (as I thought) the propositions that no movable forces exceeding the number of men voted by the House of Commons for the current year, and covered by the Mutiny and Appropriation Acts, could, without the previous assent, in some form or other, of Parliament, be lawfully employed or maintained, in time of peace, elsewhere than in India and for Indian service; and that, under the expressed terms of the Government of India Act of 1858, any use of Indian Revenues (which it was in this case proposed to use, at all events temporarily), without the consent of both Houses of Parliament, for any military operations of Indian troops beyond the frontier of India was unlawful, except for preventing

or repelling an actual invasion of the Queen's Indian possessions, or under some other sudden and urgent necessity. Some critics, who approved my arguments, blamed me for not moving a resolution founded upon them. But this, by the usage of the House of Lords, was not necessary: and, as such a resolution had been moved in the House of Commons, and met, not by a direct negative, but by an amendment deprecating as inexpedient the affirmance of any resolution "tending to weaken the hands of Her Majesty's Government in the present state of foreign affairs," my friends thought it better to be satisfied with a protest and criticism, supported by such reasons as might vindicate the constitutional principle at stake; without inviting a division, in which the majority was certain to be against us.

That was a year of surprises. The speech just mentioned was made on the 20th of May; and ten days afterwards it became known, through the fraud of a copying-clerk in the Foreign Office, that Lord Salisbury had come to an arrangement with Count Schouvaloff, the Russian Ambassador, and that we were about to enter the European Congress, pledged to concede to Russia (under some reservations with which Russia was content) the substance of the most important stipulations of the treaty of San Stefano. This revelation of a transaction which might otherwise have remained secret was received by the war party in the country with manifest signs of discontent, and with a corresponding sense of relief by the friends of peace. We were told (in words unjustly criticised

as disingenuous) that it was "inaccurate, because incomplete." The supplement, necessary to enable the public fully to understand the new position which the Government had taken up, came out a few days afterwards: it was the other agreement,[1] as to Cyprus, signed between Great Britain and Turkey on the 14th of June 1878. If Russia took, and as long as she retained, Kars, Ardahan, or Batoum (she was to have, and was sure to retain, them all) Great Britain was to have Cyprus, paying an annual sum to the Porte, and engaging, if necessary, to defend the rest of the Sultan's Asiatic dominions—not, however, unconditionally; for the Sultan undertook to reform their administration. I remember going to Mr. Gladstone on the day when this agreement was published, to learn his opinion of it, which was in the last degree unfavourable. But to the general public it seemed a masterly stroke of policy, and it had the effect of stopping the mouths of those who were angry with the concessions made to Russia. For my own part, I could not reconcile this bargaining for a territorial gain to ourselves at the expense of Turkey (after all that had happened) with any high idea of political morality. But the motives which led me to rejoice in the liberation of other parts of the Ottoman dominions from oppression and misgovernment made it impossible for me to be sorry

[1] So hastily was that agreement concluded, that it did not even follow the ordinary form of a Convention between Sovereign Powers. It ran in the name of "*England*" and "*Turkey*" (or "*the Porte*"), and not of the Queen and the Sultan.

that the people of Cyprus should, through our instrumentality, be partakers of that benefit. Neither Mr. Gladstone nor any other British Minister could ever replace them under the authority of the Porte, when once emancipated from it: and the contingency in which our right to that island might terminate under the agreement was not likely to occur. As for the policy, apart from the morality, of the transaction, I was averse to the acquisition of new territories by a country of which the dominion was already so widely extended as that of Great Britain. But it could hardly be denied that Cyprus was conveniently situated as an advanced post from which British interests in the Mediterranean, and especially those connected with the Suez Canal and Egypt, might be protected in time of war, and from which any advance of Russia in that direction, or into Asia Minor, might be observed and checked.

In the result, the acquisition of Cyprus by Great Britain, even upon the not very provident terms of money payment which were agreed to, has not been burdensome to this country. If the benefits resulting from it to the people of Cyprus have not been so rapid and great as sanguine minds may have expected, that has not been the fault of the British officers entrusted with its government.[1]

The Congress of Berlin followed, and "Peace with

[1] One of its earliest governors was Sir Robert Biddulph, brother of my son-in-law, G. T. Biddulph. Nothing was omitted during his administration which the means at the disposal of the Governor made it possible to do for the good of the inhabitants.

Honour," in the grandiloquent phrase of the Prime Minister, which was taken up, as he intended it to be, by the country. Lord Beaconsfield's popularity was then at flood-tide, and Mr. Gladstone's at the lowest ebb. The people seemed to be persuaded that things had been so managed for them, as to carry off the honours of war without making it. The author of *Vivian Grey* was made a Knight of the Garter. The service by which he had earned that reward was the completion at Berlin of the arrangement made with Count Schouvaloff, with some modifications of the treaty of San Stefano (such as the separation of Eastern Roumelia from Bulgaria) which were beneficial to nobody, and a clause looking forward to some future enlargement of the kingdom of Greece, which it was left to his successors in office to make practical. If he had then dissolved Parliament, it is probable that his tenure of power would have been prolonged for several years, and the whole course of later events might have been different. Men of no mean judgment were fascinated by the glitter and romance which seemed to surround him. My friend Bishop Charles Wordsworth glorified him in some Latin verses, which Dean Stanley, not without a few touches of irony, turned into English, and which I (in a variation of the Dean's performance) converted into satire.[1] He was, however, short-sighted, as well

[1] The first stanza of my variation was—

"Hail to the Chieftain's triumphant return!
Peace, and with Honour, he tells us he brings.
Heart of Old England, with gratitude burn!
Praise him for such unexpected good things."

as vainglorious, and reckoned too confidently upon the continuance of a popularity which rested on no firm foundation.

It would have been well for Lord Beaconsfield, if he had done with war, when the Treaty of Berlin was signed. But the ink of that treaty was hardly dry, when a rupture, provoked by Lord Lytton's policy, took place between the Government of India and Afghanistan. We heard, by rapid steps, of the occupation of Cabul and Candahar, the flight and death of the Ameer Shere Ali, the murder of Sir Louis Cavagnari and the officers of his staff. The war and anarchy which followed lasted till 1880. In justification of the high-handed proceedings of which these were the fruits, it was pleaded that the Ameer (who had engaged to treat our enemies as his enemies) had not prevented a Russian envoy from reaching Cabul during the time while it was uncertain whether there would be peace or war between Russia and Great Britain; but there was nothing to show that he had consented to, or favourably entertained, any proposals unfriendly to this country which that envoy might have made. Those proceedings were condemned by all the most eminent men who, under preceding Governments, had conducted the affairs of India[1]; and they offended the moral sense of the nation. They led to a winter session of Parliament at the end of 1878; and on the 10th of December the Afghan question was debated in the House of Lords. Lord Cairns, whom I followed

[1] Lord Lawrence, Lord Northbrook, and the Duke of Argyll.

in that debate, ended his speech by referring to the words "Perish India," as having been used by somebody,—"he would not inquire where or when,"—and "imploring the House,"—as if in contrast with those words,—to do nothing which would shake or endanger the stability of our Indian Empire. Everybody knew that he alluded to a speech reported to have been made by Mr. Freeman, the historian, at a public meeting in St. James's Hall. I vindicated Mr. Freeman. The context of those words, I said, showed their meaning to be like that of the well-known saying, "*Fiat justitia, ruat cælum*"[1]:—

> When a man used that proverb, he did not mean that he wished the heavens to fall; but only that he wished justice to be done. What could be the advantage of winding up with the suggestion that anybody, in the House or out of it, wished India to perish, or was not convinced that the safety of India would be best promoted by that course which was most just, most honourable, and most wise, in dealing either with the Ameer or with any one else?

Not only in Afghanistan, but in South Africa too, the influence of the Prime Minister's adventurous spirit was felt. The Transvaal territory was annexed to the Cape Colony, without any real consent of its people; which led, some time later, to a lamentable war with them. The war with Zululand grew out of the responsibilities which we took upon ourselves by that annexation. Sir Bartle Frere, the Governor of the Cape, as a man excellent, but trained in Indian ideas, and high-handed in his policy, engaged in that war against the will of the home authorities,

[1] *Let the heavens fall, but let justice be done.*

without estimating at their due value the courage and resources of the native race against which it was waged. More than one disastrous and unexpected defeat, and the loss of the life of the young Prince Napoleon, who (as a volunteer or student of the art of war) accompanied our army, followed. The mismanagement of these affairs destroyed the fleeting popularity of the Government, and prepared the way for its fall.

To the Hon. Sir Arthur Gordon

30 Portland Place, 16*th May* 1877.

. . . Lady Aberdeen (though every now and then she seems fragile) was only last night, when we saw her, looking wonderfully well; and Lord Aberdeen is making himself useful, as usual, in many ways. We were present at his sister's wedding, and think her husband the most fortunate of men. But I do not think him unworthy of her. He is a tall, manly fellow, frank of speech and very intelligent. Doubtless she might easily have married a richer man, but I have not yet learnt to think so much, in these matters, of what a man *has*, as of what he *is;* and I rather admire, in these times, the few who act on that principle. I may be mistaken, but it seems to me that good society is, at the present time, particularly mercenary in the matter of marriage; the richer people are the more they seem to look out for money, instead of rejoicing that they are independent of it.

My own two daughters are very happy in their husbands, and wish for nothing more than they have. Of Waldegrave and his wife (my Mary) I think I may truly say, "*Vivitur parvo bene*," etc.; and they have a most charming little girl, now just twenty months old. Probably they are at least as well off, according to a wise man's estimate, as they could have been if he had inherited the property of his family. Ridding is a most accomplished, generous man; and, though a good deal older

than his wife, still is in the prime of manhood; and my own connection with, and love for, Winchester, makes that marriage in every way agreeable to me.

Now, to turn to politics. There are, at this moment, *two* subjects of absorbing and anxious interest—the Eastern Question, and the State of the Church of England. The former is, of course, the one thing thought of, and talked of, in Parliament; as to the latter nobody opens his lips in either House of Parliament, though what is going on is most critical and dangerous.

I need not tell you what is the actual state of things as to the Eastern Question. War begun, but nothing of importance yet done in it on either the Russian or the Turkish side; a great debate in the House of Commons, of five nights, on Resolutions moved by Gladstone in an anti-Turkish sense, concluded yesterday morning by a division, in which a vote (practically of confidence) in favour of the Government, was carried by a majority of 131—the Liberals (except five or six, and twenty Irish Home-Rulers) all voting with Gladstone. There is a large anti-Russian party in *London Society*, and on the Tory side of the House of Commons, who (if they could) would drag us into war; but the prevailing feeling in the country is, I think, clearly and strongly the other way, and the result of the discussion on the House of Commons has been to pledge the Government, more strongly and distinctly than before, to neutrality, unless the course of events should threaten (what they consider to be) British interests in Egypt, or the Suez Canal, or at Constantinople, or on the Straits.

I am glad you agree with Gladstone's view, generally. So do I. Indeed, I go further than he does, in some respects; for, while he would wish to preserve, nominally and in form, at all events, the "integrity of the Ottoman Empire," while giving securities and rights of self-government to its Christian subjects, I would gladly see it broken up, and the Christian provinces made in every case independent, or united with neighbouring Christian states, such as Greece, or with an independent and enlarged Roumania or Servia. The contingency even of some enlargement of Russian or Austrian territory at the expense of Turkey (so long as it be not such as to excite the passions and

jealousies of other nations, and so lead to a general European war), is one which I should regard without alarm, and, indeed (if it were acceptable to the populations immediately concerned), with entire equanimity.

These were my views and feelings, even before the Crimean War; and you know that I always disapproved of that war, and thought it might have been avoided if the contest of opposite views within the Cabinet had not frustrated your Father's efforts for peace. At the present moment I have the fullest persuasion that there is a similar conflict of opposite views in the Cabinet, with this difference, however, that the Premier now would, if he could, involve us in war; but, for the present, the counsels of his wiser colleagues, such as Salisbury and Carnarvon, prevail. What may be the end of it nobody can tell. It may be that we shall *drift*, as we did then; that the Cabinet may split, as it did then; or that the spectre of British interests endangered may, according to the course of events in the war, give opportunities to the war party, which they have not now. However these things may turn out, nothing can exceed the interest of the immediate future; and I have a good hope that it may result in a permanent gain for Europe and the whole world, by a real emancipation of the Christian Provinces of Turkey, in one way or another.

As for party interests, they are not flourishing, and I never expect to serve the country in office again. The real cause of this is the state of the other great matter I spoke of—the Church question. The agitation of Disestablishment, in a serious way, has undoubtedly been one main cause of the political reaction in favour of Conservatism; as it is *the* main cause of dissension among the Liberals. The Nonconformist or "Liberationist" element among Liberals is so strong that it would be difficult, under any circumstances, to induce it to relinquish the idea of dictating its own terms to the party, which, of course, the moderate members of the party, who think Disestablishment an evil, can never accept.

I now turn to your own affairs, and congratulate you, very heartily, on what you are doing, and have done. It must have been terribly painful to you to have to use force, and afterwards severity of punishment, against the native insurrection. But it

is just on such occasions that a man's character stands him in stead. Everybody knows that you would be the last man in the world to go beyond what was absolutely necessary in such a case. Therefore, the attacks which might have been made under the like circumstances upon other men have not been made upon you; and the promptitude, success, and small expense, of your action, are generally appreciated. But I heartily pray God that you may not have to encounter similar difficulties again.

I read, with interest, the Blue Book. . . . I highly approved your policy in its two cardinal points, viz. (1) the determination to govern the natives by native laws, as far as possible; and (2) the principle of taxing the natives in produce, and not in money or labour; and I am very glad of the favourable results of this mode of taxation to your colonial Exchequer. All that you tell me of the native race, in addition to what is in the Blue Book, is most interesting; and I cordially sympathise with your desire to do them good, and make Fiji an exception to the unhappy history of most European colonies.—Ever, my dear Arthur, believe me, yours affectionately, SELBORNE.

To the Hon. W. W. Palmer

30 Portland Place, W., 12*th February* 1878.

We have been very much grieved at young Benson's death, and our love for our own dear boy enables us to feel for *his* parents. Lolly tells us, in her letter, that you have not been wanting in sympathy with them, and with G. R., and herself in the anxiety, of which they have had their share. It is not bad for you, or for any of us, to be reminded, that we know not where, or how soon, our last day in this world may come; and I hope it will strengthen you in that faith, and in that determination to live in dependence upon God's will and obedience to His commandments, which can, and does, take away its terrors, even from death. If we were in the place of the Bishop and Mrs. Benson, we should feel that, although the chief part of our light, and joy, and hope in this world was gone from us, we were drawn closer and nearer to that other world, to which our treasure

was gone. It is possible (and very happy too) without any loss of cheerfulness, or of interest in the pursuits and affairs, the daily duties and the lawful pleasures of this life, to look constantly beyond it; and so to live that we may "dread the grave as little as our bed"—in the words which Bishop Ken wrote, originally for Winchester scholars.

You ask in your letter of last Sunday to your Mother, for my opinion upon the present position of public affairs. Lord Hartington's attitude and conduct, and Lord Granville's too, deserve your approval; and, though I am quite sure Mr. Gladstone has neither said nor done anything throughout this crisis, except from motives consistent with the purest patriotism, and having for their object the true interests of England, as well as of other parts of the world, I am not prepared to say, that he has never been wanting in sound judgment; particularly in his speech at Oxford, while the late debate was going on. I, who have been present at, and a consenting party to, most of the deliberations of the leaders of the Opposition, as to the course to be taken by them in Parliament, can take upon myself to say, confidently, that the question has been regarded by them from no party point of view, but from their own view of British and other great interests; which they thought imperilled by the course of the Government, with respect to the new attitude taken up by them since the movement of the Russians upon Adrianople. The *appearance* of a party conflict cannot be avoided, when a Government (who of course appeal to their own party to support them) is opposed; and it certainly is not, and cannot be true, that an Opposition would act patriotically if, for the sake of National Union against any Foreign Power, they supported the Government in proceedings which they considered dangerous to the nation. I certainly did, and do, consider the Government to have been in error in changing their front, and making menacing demonstrations, at the very moment when the preliminaries of peace, and the terms of armistice were about to be signed; and if the Russians have now taken precautions for their own safety (in the event of war continuing or breaking out with ourselves or Austria), which alarm our susceptibilities about Constantinople and its defences, and if they did so with a secrecy which increases our irritation,

I think they may (very probably) have been induced to do so by the altered, vague, ambiguous, and menacing attitude of England, accompanied by more than hints, of concert with Austria.

With such a navy as we have (which must be always our principal reliance), I think we should have gone into any Conference of the European Powers, not a whit more deficient in material strength at our back, than we shall now do after the vote of six millions, and with *far more moral strength*, for all purposes of reasonable and just influence upon the settlement of the terms of a durable and beneficial peace, than we can exert now that we have advertised ourselves as paulo-post-future belligerents, if our views do not prevail. That attitude necessarily draws us closer to Austria than we ought to be drawn, if we mean to disregard the supposed interests of Austria in the Conference, when they are opposed to the true interests of European peace, and of the provinces subject to Turkey. Austrian policy is dictated on the part of Hungary, by passion and revenge, impelling them in the direction of a Russian war; and on the part of Vienna, by fear of Sclavonic disaffection, and perhaps German interference, and possibly also of some future retributions from Russia herself. The result of these contrary motives is a mean, selfish, and crooked policy; which will probably lead her to attempt to keep things in the Christian provinces of Turkey, as nearly as possible in the same situation as they were before the war. Now, of all things in the world, this is what, on the part of England, I should most object to; and the attempt, if made, and if supported by *us only* (as might very possibly be the case), would probably be resisted by Russia, and might so lead to a renewal of the war, with ourselves as parties to it in what I should consider to be a thoroughly bad cause.

As to the *last* orders for our ships to go up to the Bosphorus, I thought, after the news which had come, and considering the reasons given by the Government, that it was proper not to object. I am, however, far from sure that they were wise orders. Without them, the Russian troops would not have gone into C. P.; nor within the lines of Gallipoli during the armistice; and it is not at all clear, that there was any real

danger to British lives or property. What the Russians may do now, remains to be seen.—Ever your most affectionate Father, SELBORNE.

TO THE HON. SOPHIA M. PALMER

30 PORTLAND PLACE, *7th July* 1878.

As you wish to know what we think of the proceedings of the Congress, I sit down to tell you my own ideas, which, I believe, are very much those of my political friends.

As the Congress is not yet over, it is (of course) possible that they may still quarrel, either about Batoum or some other point. This, however, I do not myself expect. Hitherto, everything that has ever been done has been consistent with the agreement between the English and Russian Governments, originally published by the *Globe*; and as in that agreement we engaged not to object to the cession of Batoum to Russia (or, at all events, not forcibly to resist it), I do not see how it is possible for Lord Beaconsfield, consistently with good faith, to gratify the English fire-eaters upon this point, any more than he has done upon others.

The settlement, though modifying (in details of more or less consequence), the arrangements of the Treaty of San Stefano, as far as relates to the subject European Provinces of Turkey, is more in accordance with Gladstone's and the Duke of Argyll's policy, than with that so much desired, and so strongly advocated by the supporters of the Government, and particularly by their newspapers. Nor has Russia any cause to complain of it. The substantial fruits of the war remain with her; and she has earned a better title to the gratitude of the new nationalities (the Greeks not excepted) than either ourselves or Austria; by whose influence the gains from the war to Bulgaria, Servia, and Montenegro have been reduced in extent, and those which Greece hoped for have been practically refused. For a "recommendation" to Turkey, which the Turks can either act upon or refuse as they like, to enlarge the northern frontier of Greece, is more likely to sow the seeds of future disturbance, than to induce the Turks, at present, to give up any territory which they can keep.

The Turks, on the other hand, are not likely to be very grateful to us. Taking into account what has been done (*beyond* the stipulations of the Treaty), as to Bosnia and Herzegovina, they seem to me to be worse off, in some respects, than under the Treaty of San Stefano, and scarcely in any respect better. For the division of Bulgaria into two provinces, while it diminishes the chance of the new arrangements being permanent, and a bulwark against the future interference on the part of Russia, is no gain to the Turks; and it can hardly be much comfort to them to have to maintain a line of fortresses in the Balkan range between the two provinces, of which both are practically emancipated from their government. The pretence, therefore, made by Lord Beaconsfield of befriending Turkey, and maintaining the Treaties of 1856 and 1870, turns out to be a complete *sham*.

The Bessarabian affair seems to me to be little to the credit of anybody. Roumania, which (as far as I can judge) really gains by the arrangement, would have done much more wisely, to settle it quietly with Russia; and Russia would have also done more wisely, as well as more generously, if she had so managed as neither in fact, nor in appearance, to *force* Roumania to give up any territory against her will.

The Liberals, while they think that the Government has gained neither credit nor anything else, by the results of their warlike demonstrations of a few months back, will probably be too well satisfied with them to be, just at present, very critical. But it is evident that our negotiators will not come back in a very triumphant attitude, nor gain much praise from those who so lately applauded them. The *Pall Mall Gazette* and *Standard* do not conceal their disgust; and the *Telegraph* and *Morning Post*, though less outspoken, are plainly not pleased. The *Times* only praises everything.—Your ever affectionate SELBORNE.

To the Hon. Sir Arthur Gordon

BLACKMOOR, PETERSFIELD, *3rd September* 1878.

. . . I wonder what your final thoughts have been about our political situation. Mine are these. I am, of course, very glad that the danger of war has gone over; but then, I do not feel any gratitude is due to the Government on that account, because,

from the time that it was determined to maintain an attitude of neutrality, down to the peace of San Stefano, there was not any such danger: and, if it seemed to arise afterwards, this was entirely due to the departure of our Government from their former attitude, and to those offensive demonstrations towards Russia, for which I saw no justifying cause when they took place, and see (if that were possible) still less now, when we know with what modifications of the peace of San Stefano our Government was prepared to be contented. So far, therefore, as relates to "peace," the boasts of the Government seem to me to be very much the same thing as if a man, after threatening to shoot me through the head, should claim credit for having saved my life, because he has not done it. Then, as to "honour"; I should have seen nothing dishonourable in acquiescence, on our part, in the peace of San Stefano, either with the modifications of it which have taken place, or even without any modification at all; but I confess it is not agreeable to my notions of honour, in an international transaction, to assume first the tone of a bully, and appear to insist on certain things "for the maintenance of the faith of treaties," etc., and then (after giving up everything substantial, on which we had seemed to insist, and securing to ourselves an equivalent in the shape of a share of the spoil), to cover our retreat under a mighty flourish of trumpets, and an enormous quantity of fanfaronade and self-glorification. As an Englishman, therefore, I could not be proud of our share in these transactions, even if I were in accord with the policy (if any policy there really is, beyond party objects at home) which may be discoverable in them.

As to that policy—so far as the mere territorial arrangements resulting from the peace are concerned, it is possible that they may be the best which could, under the circumstances, have been obtained. Many of my political friends think so; and I do not pretend to have a very clear or confident opinion to the contrary. If I were a philo-Turk, I should be altogether dissatisfied with them; if I were a Russian, actuated by that ambition of territorial aggrandisement which is imputed by most people to Russia, I should be altogether satisfied; for Russia retains, in substance, all the territorial acquisitions which she has gained by the Treaty of San Stefano; she has entirely, and for ever,

cancelled and annihilated all the losses which she suffered by the Crimean War; and if she wished to establish, in the political arrangements of the provinces of European Turkey, a copious store of opportunities of influence and interference hereafter for herself, I should not (looking at the matter as I think an intelligent and not fanatical Russian would see it) be at all inclined to prefer the arrangements of San Stefano to those which have actually been made. As an Englishman, with English sympathies, and considering (so far as is right) English interests, I cannot help thinking that, even if the mere territorial arrangements *are* as good as could have been made, our Government has contrived its own part in them in such a way as to *minimise* their advantages, and (if I may coin the word) *maximise* their risks, in a way which I should have thought, beforehand, hardly possible.

I think, for instance, that it is the true and permanent interest of this country to cultivate and maintain, as far as possible, friendly relations with Russia. If so, what am I to think of politicians, who, professing and maintaining neutrality during the whole of the war, have been grinding and gnashing their teeth at Russia ever since peace has been made, and who, simultaneously with their own accession to a general European settlement of the terms of peace, have made a sort of conditional declaration of future war, in alliance with Turkey only, against Russia, and have assumed an attitude of standing preparation for that future war, involving engagements and new departures of policy, of which no one can now forecast the course, both in Western and in Eastern Asia?

I think, also, that the just and natural sympathies of this country should go with, and not against, the national and patriotic aspirations both of Greeks and of Slavs; and that the whole political experience of Europe, since 1848, as well as our own experience in Ireland, ought to warn us against a policy which seeks to check and counteract those aspirations, and to incline us to favour their satisfaction and development, as opportunities offer; and ought, more particularly, to lead us to regard religious agreement, on the one hand, or disagreements, on the other, as a powerful factor for good or bad results. If so, what am I to think of a policy which has at once trifled with and made fools of the Greeks,—professed, as one of its motive

principles, fear of and opposition to Panslavism,—and endeavoured to substitute Austria (a Roman Catholic Power) for any and every form of Greek or Slavonic ascendency, both as an immediate counterpoise to Russian influence in European Turkey, and as a candidate for the succession to Constantinople whenever the Turkish Empire in Europe comes definitely to an end. For this last idea I am not drawing on my own imagination; it was very distinctly suggested by Lord Salisbury, in his speech in the House of Lords, after his return from Berlin.

To travel into the region of more remote and speculative consequences might be impractical; in speaking of them one cannot be so sure of one's ground. But if the Anglo-Turkish Convention is to be more than a mere sham, so far as Asiatic Turkey is concerned, it seems to be very evident that it will produce an enormous disturbance of the balance of power in Europe in favour of this country; and, whatever tone it may be convenient to France, or to any other European Power, to assume at the present moment on this subject, it is not difficult to conceive that the time may come when other Powers, as well as Russia, may desire to place limits to our too great preponderance, especially if that is understood to be backed by the material force of our Indian Empire. These considerations naturally connect themselves with another, which is the real explanation of the facility with which popular opinion in the country has seemed to applaud, and to participate in, the game of brag which the ministers have been playing,—I mean, the avowed relinquishment, for the present, of the insular and pacific tone of policy which has prevailed in this country since the Crimean War, and the disposition which (as the populace at home, and continental politicians abroad, infer from this) they may probably have, to make the voice and power of England felt, as far as possible, in all questions of European policy. Such a disposition is always agreeable to the passions and follies of mankind till they feel its cost too severely. It is the explanation of the popularity of almost all the wars in which this country has ever been engaged, and almost all of which must now appear, to any civilised and dispassionate student of history, to have been impolitic and unjustifiable. No doubt, France is now speculating that, in the event of another Franco-German War, this disposi-

tion will make it necessary for us to interfere, and that (with due cultivation in the meantime) we shall be found her ally. The speculations of Germany are, probably, the same, only with opposite expectations. Both will be disappointed, and, when that war is over, I suspect our position in Europe will be more isolated than ever; with this difference, that, while a pacific policy would have given no Power any reasonable cause of offence or alarm against us, an ambitious policy may have had the opposite effect, upon most, or all of them.

I must now conclude this. I rejoice in your excellent work in Fiji, and trust that you will be permitted to go on with it, without interruption.—Ever yours affectionately,

SELBORNE.

CHAPTER XXII

THE LAND LAWS — CHANGE OF GOVERNMENT — MY SECOND CHANCELLORSHIP — LORD BEACONSFIELD — THE BURIALS ACT — LETTERS — THE BRADLAUGH CASE — SIR ALEXANDER COCKBURN.

1879–1880

Mr. Gladstone was occupied, during the autumn of 1879, with his first Midlothian campaign, into which he threw himself like a gladiator in the arena, as no other statesman of similar position had ever done before. As an exhibition of intellectual and oratorical power, it was very remarkable; but it was a precedent tending in its results to the degradation of British politics, by bringing in a system of perpetual canvass, and removing the political centre of gravity from Parliament to the platform.[1] Whatever may have been his intention in 1875, it was now clear that his retirement was at an end.

[1] It would be interesting to know whether it was before or after that autumn, that he told Lord Houghton, "he felt strongly that the Statesman was becoming every day more and more the delegate, and less the leader of the people" (Reid's *Memoir of Lord Houghton*, vol. i. p. 485).

Some of those who had been his colleagues met to consider the situation. The notice did not reach me in time to be present, but Lord Granville reported to me on the 21st of December, that Lord Hartington wished to insist upon Gladstone resuming the lead; but that the rest were, for the present at all events, against any such step. Cardwell was one of them; and I wrote my thoughts to him on the 16th January 1880:—

I am sorry I did not see you, when there was a meeting at Devonshire House a short time since; Granville's notice reached me a day after the fair. He explained to me afterwards what had taken place; and I said in reply that, although I did not doubt I should have agreed with him and you as to the immediate question, I did not well see how, if there should be a Liberal majority at the General Election, it would be possible to avoid either having Gladstone practically at the head, or being in a position (from leaving him outside) very dangerous to any Ministry. He said, he could only answer by waiting on the course of events, and that this, like many other questions, would have to be solved *ambulando*. A sufficiently sensible answer, I think; and I hope it may be applicable to other questions also. I have asked him to explain to me his own view of—what I myself do not at present understand, though it seems odd, that the party should commit itself on such a subject without some consultation with those who represented the law in the Cabinet—the *programme*, which has been announced in so many speeches, of some great changes in the law of entail and settlement; and I have told him that, until I understood his view, I must be allowed to think that some unwise things have been said on that subject. He defers explanation about it, as more suitable for conversation than for writing; which makes me suspect that his own view is not absolutely clear upon the point. I wish I could feel sure that Gladstone was likely to examine a subject of this kind quite dryly and dispassionately, without being actuated by the idea of breaking down aristocratic and territorial interests.

But he seems to me, on this point as on some others, to have entered into a league of common sympathies and antipathies with Bright; whom I respect very much as an able and honest, but certainly not as an unprejudiced or cool-judging man.

I had told Lord Hartington in the autumn of 1877, when he asked for my opinion on what was called "the Land Question," that I thought the common talk about it vague and unpractical; and that no practical scheme consistent with the rights of property, which stopped short of the French law of compulsory division (of which I was no advocate), would ever do much, or succeed in interesting people who were not lawyers. It was, doubtless, what I wrote upon the subject to Lord Granville, which led to my receiving from Sir Henry James, on the 9th February 1880, a copy of a paper which he had drawn up for the use of Lord Hartington, explaining in a popular way the state of the laws affecting settled estates, and his view of the extent to which a reform of such laws could be carried. In reply,[1] I stated my own views, in substance as follows:—

I thought it would be a mistake, economically and otherwise, for the State to interfere as to property in land on any principles, on which it might not be considered necessary to interfere with the dispositive power of owners over movable property. For the assimilation, as far as possible, of the laws of real

[1] 16th February 1880. A week afterwards, on the 23rd of February, I had occasion to express in the House of Lords some of the same opinions, on the introduction of Bills upon the subject by Lord Cairns, as Chancellor.

and personal property, both as to succession and as to settlement, there might be much to be said; for the contrary process of increasing the existing differences, I thought there could be no valid reason. Mortgages, not settlements, were the real clog upon dealings with land; and the evil most needing remedy was the cost and difficulty of transfer and mortgage. What prevented landowners, whether limited or not, from making expensive improvements when it would be really advantageous to make them, was not an unwillingness to lay out money for the benefit of their children, etc., when family estates were in settlement, but the want of money, when the estates were small, or the owners not affluent. This impediment was as great to an owner in fee-simple as to anybody else. Land, as an investment, produced a very small return; and money laid out in improvements did not, in most cases, produce a better return than the first investment; often (*e.g.* if expended on cottages or farm-buildings) it produced still less. The only class of landowners who could, or ever would, make expensive and permanent improvements, were those who had some command of money; and this you could not give them by any mere modification of their estates in the land. On the other hand, I could conceive nothing more likely to divert capital from the land than any feeling of insecurity as to the freedom of that kind of investment from special legislative interference.

A small landowner could not raise money by mortgage, even if owner in fee-simple, without crippling

himself in a way which small landowners could seldom bear. In such cases, the only real remedy for a state of embarrassment was sale; as to which I agreed, both with the opinion that sale might often be a material relief, and tend to bring capital into the land which might otherwise be wanting, and with the principle of giving tenants for life under settlements powers of sale.[1]

I did not believe it to be true that the existing laws or customs of entail or primogeniture tended to promote artificially the accumulation of land in fewer hands than would otherwise be the case; though it was, no doubt, true that the freedom of disposition which the laws of this country (as compared with those of France, etc.) allowed *had* that tendency; or, rather, that an opposite tendency might be established, by taking away that freedom of disposition to the same extent that it was taken away in France and some other countries. As long as there was a demand for land at prices which made the return from it less than from other investments, and as long as capital was necessary to make its cultivation remunerative, the smaller landowner would have inducements to sell to the larger; and those only who had command of money would have inducements to buy land in any substantial quantities. To the proposal to make the succession to land, when the owner died intestate, the same as that to personal property, I had no objection, except that I believed that change would have no tendency to arrest the confluence of small with larger

[1] As has since been done by Lord Cairns's Settled Estates Act.

properties, but rather the reverse; as the small properties (to which only this change would, as a rule, apply) would always be sold upon the death, intestate, of an owner with several children.

I thought it would be most unreasonable not to allow settlements of land as well as personalty to be made upon marriage so as to provide for the issue of the marriage. If this were sufficiently provided for, there would probably be no practical objection to curtailing the power of tying up estates to the extreme limits now allowed by the law against perpetuities. But I should object strongly to any greater interference with the present powers of disposition than might be justified on the principle of putting real and personal property as nearly as possible on the same footing; and I would, therefore, subject the law of settlement, as to personalty, to the same revision with that as to land.

It was suggested that the public might have an interest in increasing the productiveness of land for the supply of food; and Mr. Caird[1] was quoted as to an increased rental of £31,000 per annum, said to have resulted from an aggregate outlay by a Land Improvement Company of £195,000 upon certain estates, within seven or ten years; and also as to certain experiments of Mr. Lawes in manuring, which were supposed to show, from an average of twenty years, that "the natural produce might be doubled, or even trebled, by the continuous use of special manures." As to this, I said:—

[1] Afterwards Sir James Caird.

Surely, if men are allowed to lay out their money in land, and if one set of men find it convenient to hire and another to let, it will be best for the law to leave them, as far as may be, to make their own bargains. You have to deal with men, not machines,—good, bad, and indifferent, both tenants and landlords; also with rich, poor, and those in the mean, on both sides. A cut-and-dried system of hiring and letting which will suit all cases cannot be devised by law. I should be curious to know what has become of the increased rental of £31,000, since the turn which agricultural affairs have lately taken? When Mr. Lawes, or Mr. Caird, talks of doubling or trebling the natural produce, does he mean, *to a profit?* If he does, I cannot take Mr. Lawes's experiments as any proof of it. It is the interest of all persons concerned in land to make as much profit as possible out of it. This, of course, may want money; but you must take the conditions of the case as you find them; and you cannot divert to the increase of the produce of land, by legislation or other artificial means, money which may be more profitably employed elsewhere. As for the supply of food, of course it is for our interest to make the soil of England supply as much as possible of those kinds of food which it can supply better, or more cheaply, than we can get them elsewhere. It is not true economy to endeavour to stimulate any sort of production which does not really pay to the producer. The question, therefore, is not what the land might be made to produce, but what it can be made to produce *profitably.*

When this correspondence took place, the Parliament elected in 1874 was entering on its sixth Session, and a dissolution was in prospect; but it was not expected that this would take place before the autumn. But the Government, for reasons which I have always found it difficult to understand, suddenly announced its intention to dissolve before Easter, and did so on the 24th of March. The result was contrary to Lord Beaconsfield's expectations; a very large majority was returned against

him, and he resigned without waiting for the meeting of the new Parliament. Mr. Gladstone, his inevitable successor, formed his second Ministry by the 28th of April, the day before Parliament met; and on that day I kissed hands, for the second time, as Lord Chancellor.

It was my good fortune, under all changes, to maintain with Lord Cairns the most friendly relations, one instance of which occurred in August 1878, when a new Great Seal was made, and the Queen gave him (as was usual) the old one, which had been in use for sixteen years. He was kind enough to give me one of the two engraved pieces of silver of which it consisted, as Lord Campbell had done in 1862 to Lord Chelmsford; though he was certainly under no obligation to follow that precedent. But he said that he thought such a division, under the circumstances, "in accordance with the principles of Equity"; and I willingly accepted the gift from him. I had done what I could for his assistance when I left office in 1874, with respect to all matters of business which had been in my hands, and which I thought might require his attention; and now, in 1880, he did the same for me, with equal cordiality. Throughout the sharp contests of the years which followed, in which he took a conspicuous and energetic part, there continued to be mutual confidence between us, and co-operation upon subjects on which we were agreed.[1]

Lord Beaconsfield's political career was now at an

[1] Especially on Lord Cairns's Settled Estates Bill and Conveyancing Bill, both of which passed into law; and on Lord Selborne's Judicature Bills of 1881 and 1884.—K. M. M.

end; he died on the 19th April 1881, almost exactly a year after his resignation. He rose to power by an adroit but unscrupulous use of the opportunity afforded by the repeal of the Corn Laws, when he exhausted all the armoury of invective to exasperate and render permanent the resentment of the bulk of the Conservative party against Sir Robert Peel. Gaining influence over Lord George Bentinck and Lord Derby, he was recognised, soon after Lord George Bentinck's death, as leader of his party in the House of Commons. Those who had observed his course from the beginning gave him no credit for settled convictions upon any subject, except the honour and interest of the race from which he had sprung; and his books, in which there was much glitter and tinsel, but little solid or genuine matter, confirmed that impression. He seemed to be an actor, in a mask which he never took off. He had courage, audacity, temper, patience, and an indomitable will; and by these qualities, and a study of men, too cynical to be deep, but useful for party management, he established his position. He had also a certain magnanimity, which made him generally impassive and unruffled, even when successfully attacked, and free from all appearance of ill-will or resentment against those who attacked him; a hard hitter himself whenever it suited his purpose, he could take hard blows, as nothing more than the regular practice of the game. He seems to have drawn his own portrait, when he said of Sidonia:[1] "It was impos-

[1] *Coningsby*, chap. x. p. 212 (ed. 1889).

sible to penetrate him. Though unreserved in his manner, his frankness was strictly limited to the surface. He observed everything, thought ever, but avoided serious discussion. If you pressed him for an opinion, he took refuge in raillery, or threw out some grave paradox, with which it was not easy to cope." Lord Beaconsfield was a man of genius, certainly; those of his writings which have most the appearance of seriousness leave the impression that he was more Radical than Conservative, with a strong sense of the hollowness of the politics of his time. As an orator, he was greatest when least serious; no man excelled him in the satirical vein. But his graver efforts were turgid and artificial; wrapping up the absence of much definite meaning in ponderous words. Even in private he did not seem (to observers like myself, who seldom met him) to talk naturally. The one really great work of his life was to raise his own race to a footing of fuller social and political equality in this country with their fellow-citizens; obliterating the last remnants of a state of feeling towards them, which had formerly been productive of much wrong, as it is still in some parts of the world.

It must be acknowledged that he appeared to most advantage in his greatest prosperity. Some men, of whom all thought and spoke well before they became favourites of fortune, have proved unequal to the test of power. This was not Lord Beaconsfield's case. As he rose in power, he rose also in the general opinion of men; and, whatever may be thought of

his statesmanship, he justified the ambition which forced its way against all obstacles to the highest place, by bearing himself in that place with dignity and without undue elation; and it was his happiness to win, not the confidence only, but the personal regard of his Sovereign.

It was a great drawback upon my satisfaction at returning to the Woolsack, that Cardwell could not be included in the Ministry. He had an illness, more serious than I at the time understood, in the autumn of 1879, and spent the first three months of 1880 at Cannes for his health. From thence, reports of his condition reached Mr. Gladstone and Lord Granville, which forced upon them the conclusion that he could not be asked to resume office. This, both to him and to Lady Cardwell, was a severe mortification; but it was only too apparent, when they came to London, that he was no longer what he had been; and the malady under which he was suffering continued from that time to make progress, and gradually to affect more and more his powers, both of body and of mind.[1]

Of the measures announced in the Queen's Speech on the 20th of May 1880, that for the settlement

[1] The difficulties connected with Lord Cardwell's case suggested to Lord Selborne the provisions in his Lunacy Bills for dealing with the property of persons suffering from mental decay, which were afterwards passed into law under the next Administration, and have been very extensively used, beyond the expectations of the Masters in Lunacy as expressed at the time. Of the Lunacy Acts in Lord Chancellor Halsbury's time, the whole foundation and most of the labour was initiated and accomplished by Lord Selborne when Chancellor.—K. M. M.

of the Burials question was entrusted to my charge. This was a controversy which I had watched painfully for several years, not breaking silence about it till 1876. Sectarian warfare upon such a subject as the burial of the dead was hateful to me; my feelings were strongly against the agitation of that question for party purposes. But when it was no longer possible for those evils to be averted, it became a duty to consider what ought to be done. I perceived that the question was not one which could be treated merely from the point of view of ecclesiastical prepossession or sentiment. The burial of the dead was a natural and legal necessity. By law, every one, without distinction, had a civil right of sepulture in the churchyard of his parish; and, in a very large number of places, the dead could not be buried anywhere else. But interments in churchyards could only take place under the conditions of ecclesiastical law; which in certain cases denied, and in all others required, the performance of the Church Service by the clergyman of the parish, and permitted no other religious observance. The friends, therefore, and relatives of a deceased Nonconformist,—in most cases Nonconformists themselves,—being free from all ecclesiastical conditions in the use and enjoyment of other civil rights belonging to them by law, were in this one matter still subject to them, under circumstances in which natural feelings were liable to be strongly excited. As long as those feelings led them to acquiesce without raising any question, all was well; but, when the influence of the Nonconformist denomi-

nations was set in motion to excite and organise a general sense of grievance among the members of those bodies, instead of a general disposition to acquiesce, a new state of things arose. For the Church, no position could be more invidious than that of seeming to contend against religious liberty over the bodies of the dead. These considerations led me, more than once, when privately consulted by clergymen and other friends, to express the opinions to which I afterwards gave public utterance in 1876,[1] when Lord Granville brought the subject forward in the House of Lords; and I found that not a few men of note among the clergy agreed with me. Even of those who were reluctant to recognise any rights of Nonconformists in the churchyard, many acknowledged the necessity of some remedy for what they perceived to be an anomalous and dangerous state of things. Some of them thought it might be found in the multiplication of cemeteries; but it was obvious that this could never be a remedy coextensive with the grievance. Others were willing to allow the option of silent burial in churchyards; and a proposal to that effect was made in a Bill introduced by Lord Beaconsfield's Government in 1877. But to me and others it seemed impossible to go so far without going further. Upon the second reading of that Bill, Lord Granville again moved his resolutions. He was defeated; but in its next stage there was an equal number of votes for and against amendments, the same in effect, moved by Lord Harrowby; and upon

[1] 15th May 1876.

the Report those amendments received the support of both the Archbishops and the Bishop of London, and were carried by a majority of 16 in a House of 238. The Government gave up their Bill; but it was obvious that a settlement upon the lines of Lord Harrowby's amendments must before long take place.

On the formation of Mr. Gladstone's Ministry in 1880, I wrote[1] to Archbishop Tait, inviting from him suggestions as to any safeguards which the measure might require (beyond those contained in the Bills previously introduced in the House of Commons), for the prevention of indecent and disorderly proceedings at funerals; and saying that the Government wished to settle the question with as much concurrence as possible from those who best understood and were most desirous to promote the true interests of the Church. The Archbishop answered, that the principles embodied in Lord Harrowby's amendment, which he had supported in the House of Lords, still commended themselves to his judgment; and he suggested that effect should also be given to certain recommendations which had been submitted to the Crown, under letters of business, by the Convocation of Canterbury, for securing some relief to the clergy in cases which had been felt to press hardly upon their consciences, in accordance with amendments which had been proposed by himself and the Archbishop of York in 1877. To this I agreed.

The Bill was introduced into the House of Lords

[1] See the Archbishop's *Life*, vol. ii. p. 391.

on the 27th of May 1880. Its leading provision was, that, on certain notices being given, burials might take place in any churchyard or graveyard in which there was a right of burial, at the option of the person responsible for the funeral, "either without any religious service, or with such Christian and orderly religious service at the grave as such person should think fit." It also proposed to give effect to the recommendations of the Convocation of Canterbury, as the Archbishop desired.

In my speech upon the Second Reading, I explained the reasons for the measure, substantially in the same way as I had stated them in 1876 and 1877.

It is strange (I said) that a settlement of this grievance, which consists of two parts,—the one compelling the use of the Church Service in certain cases, and the other compelling burial without any Christian service in other cases,—should have been thought possible, by taking away one part of the grievance, and making the other universal. To those who have learnt, as most Christian bodies in England have learnt, from the example and practice of the Church of England, to regard with repugnance the neglect or omission of religious solemnities in the burial of their dead, there is a want which compulsory silent burial can never satisfy. Are you, in the name of the Church of England, to say, that Christians who wish to bury their dead with a religious service shall use no religious form if they will not use yours? It is not only as a citizen, it is much more as a Churchman, that I protest against such a doctrine as that. If you cannot justify the imposition in the one case of the use of the Church Service by compulsion on the people, on what conceivable motive should you refuse to your fellow-Christians the power to use their own service, and deny them the liberty of being as religious as they wish to be on these solemn occasions?

Adverting to the reverence justly and naturally felt by the clergy for consecrated ground, and their fear lest it should be desecrated, I added:—

I can understand that such a dedication and the feelings connected with it, constitute good reasons why nothing profane should be suffered in such a place. But in England it has not been deemed a profanation to lay in the consecrated ground the remains of unbaptized persons, of those who have laid violent hands on themselves, and of strangers and foreigners, as to whom no one can tell whether they have been baptized or not. If that involves no desecration, how can it be profanation or desecration that any Christian service used by any body of Christians, according to their light, should take the place of silent burial, when the Church Service cannot be used?

The Second Reading was carried by a majority of 25; and the Bill passed the House of Lords on the 24th of June, with some amendments. Of the amendments which were agreed to by the House of Commons, the most important was one moved in Committee by myself, for the purpose of excluding controversy as to what should be deemed a Christian service. It provided that, under that description, every religious service used by any church, denomination, or person professing to be Christian should be held included. Without this there would have been a serious risk of those words (which I and the Bishops who supported me regarded as indispensable, but to which exception was taken in some quarters) being omitted in the House of Commons. As it was, they were retained, upon a division, by a large majority. The Queen took some personal interest in this point, and asked me for explanations, which I gave Her

Majesty to the best of my power, and with which she was satisfied.

As to the relief, in certain cases, to the clergy of the Church of England, the Bill underwent in the House of Commons some modification; more formal than substantial. As introduced, and as it passed the Lords, it recited the action of the Convocation of Canterbury, and proposed to permit exactly what that body had recommended. To this Mr. Gladstone attributed considerable importance. He wrote to me, on the 16th of August, that he had asked Mr. Bright to find out whether the recital as to the action of Convocation was likely to be seriously objected to; considering it to be in accordance with established practice, and in itself reasonable and appropriate. He thought himself pledged by a long course of conduct to treat the clergy with respect, while opposing them without fear when civil right required it. He cared less about Establishment than many, and as to other amendments desired only to keep faith with the Archbishop; but on this point he was stiff, and not disposed to yield unless the University members did so, which might make a difference.

The University members, and the Bishops also, thought more, in this matter, of substance than of form. What the Convocation had done was open to some not unreasonable criticism; and to have it criticised in detail, and in an unfriendly spirit, in the House of Commons, would have been very inconvenient. It was found that to be stiff as to the form might endanger the substance. When, therefore, it

was proposed (I think by Mr. Henry Fowler) to substitute for the whole clause founded on the recommendations of Convocation another, which (without naming that body or referring in terms to what it had done) exempted from censures or penalties any of the clergy who, in the cases meant to be provided for, might use "such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as might be prescribed or approved by the Ordinary,"—the proposition met with general assent. Mr. Gladstone acquiesced in it: and the Bill, so altered, passed.

The experience of more than ten years, since the enactment of that measure, has justified the hope entertained by its authors, that it would put an end to a painful and dangerous controversy; and that the securities taken by it against irreverent or disorderly proceedings in Churchyards would prove sufficient for their purpose. The cases in which advantage has been taken of its provisions have been few, in comparison with the numbers of Nonconformists; and its operation has been attended with much less irritation and difficulty between those taking advantage of it and the parochial clergy, than was in many quarters expected.

To the Hon. Sir Arthur Gordon

June 1880.

Perhaps you may care to hear something about those of my colleagues, who were not in the last Cabinet of which I was a member:—Lords Spencer and Northbrook, and Sir W.

Harcourt, Forster, Chamberlain, and Dodson. Chamberlain is a personally agreeable man, of good countenance, manners, and address: and not inclined, I think, to any compromise of his opinions. Lord Spencer is delightful; everything to be desired in a colleague. Northbrook and Dodson are both men of good judgment, but rather reserved. Forster is, as you know, upright and excellent; but I think *firmness* is not his strong point. Harcourt you and everybody know: so I need not speak of him.

The state of affairs in Afghanistan and Turkey—our unhappy inheritance from our predecessors,—continues without much light. As to the former, the sad event upon the river Helmund, of which you will have read the accounts in the papers, compels us to continue for the present operations in the Kandahar district: and nobody can yet say when they may be brought to a close,—certainly not till we have crushed the force under Ayoub Khan at Herat. Cabul itself we have given up to the new Ameer, Abdul Rahmen; some people here will have it that we have done so too soon, and so as to deprive the force of General Roberts (now on its march to Kandahar) of a safe base of operations; but this is not the opinion of the Indian authorities. In Turkey, the game of the Porte is still to shuffle and procrastinate, to combine the substance of resistance with the pretence of yielding, and to look out for divisions of opinion and action among the Powers. I heartily trust that we may be able to baffle this game: but whether we can or not must, I suppose, depend not on this country alone: and I doubt the disinterestedness and sincerity in Eastern matters, of *every one* of the Powers with which we have to co-operate. In the meantime, Goschen is working on very well at Constantinople; and Lord Edmond Fitzmaurice is doing good work in the European Turkish Provinces.

. . . We have had, since Sunday the 8th, a most happy change to glorious weather, *just* (and *only just*) in time to save our harvest. SELBORNE.

24th July 1880.

. . . Besides all the difficulties of the Indian, African, and Foreign questions, to which the Government succeeded, and

which are making gradual progress towards what I hope may be good solutions, the course of the present short session has been embarrassed by others, some of them forced upon the Government by causes for which they are not responsible, and some for which a great many persons in as well as out of their own party, think them to blame. They had to make up their minds to, and prepare their measures for the session, too suddenly to admit of any mature deliberation, or of a very careful treatment in their details and form: and they determined, that, out of a short list of measures, two should be on subjects, at first sight easy as to their principles, but really of a kind to raise important questions, on which there was likely to be much difference of opinion, both of principle and of detail,—I mean, the two measures, as to Ground Game, and as to the Liability of Employers for injuries to Workmen in their employment. I cannot say, that I think either of the Bills as brought in, was in very good form: and they are very unacceptable, the one to landowners, and the other to large capitalists who are employers of labour. A third measure, the Burials Bill, was entrusted to me. I did what I could to mitigate its provisions, by showing as much consideration for the clergy as the nature of the case admits of: without, however, to any considerable extent disarming their hostility out of doors. By the help of this moderation, I succeeded in conciliating a considerable number of the bishops, and so piloting the measure through the House of Lords: but whether the more violent members of the Liberal party, and the representatives of extreme Latitudinarianism and unbelief, may not, with or without the help of extreme Churchmen, such as Beresford Hope, so alter it in the House of Commons, as to endanger its ulterior success, or (which would be as bad, in my eyes) give the bishops and clergy just ground of complaint, I cannot, as yet, foresee with any certainty.

But these are not our greatest troubles. The miserable election of Mr. Bradlaugh, for Northampton, led to the waste of the best part of a month in the House of Commons in discussions, from which nobody except Mr. Bradlaugh, and his like, did, or could, derive any benefit. The Government, though in no way sympathising with him, and detesting his opinions and publica-

tions, had no option but to maintain the impropriety and inexpediency of any exclusion of an elected member by a vote of the House of Commons, upon grounds of doubtful legality; when, by a different course, the question would be left open to the determination of the Courts of Law. And, in this way, the Opposition gained the advantage of being able, all through the country, to represent the Government as supporters of Mr. Bradlaugh. Then it was deemed necessary, on the strong representations of the Irish Government, to bring in a temporary Bill for the purpose of putting a check upon wholesale evictions in the West of Ireland, during the prevailing distress; and this was done in a manner which bore signs of undue haste, and without the production to Parliament of any very clear proofs of the necessity for a step, otherwise inconsistent with the rights of property, and liable to the imputation of going a certain (though but a very small) way in the same direction with Mr. Parnell's mischievous agitation. This has alarmed almost all the more moderate Liberals: Lord Lansdowne, and some others not in the Cabinet, have resigned their offices: and it is expected that the Lords will throw out the Bill by a large majority. The Tories exult: and men of my way of thinking do not like the outlook at all.—Yours ever affectionately, SELBORNE.

At home, besides Irish affairs, there was trouble arising out of the return of Mr. Bradlaugh for Northampton. For almost all purposes tests had been abolished: and it seemed possible, that by a liberal interpretation of certain Statutes, a member of Parliament who did not profess Christianity, though not belonging to any class expressly described in those Statutes, might be allowed to make an affirmation instead of an oath. The House of Commons acted provisionally upon that view, until the decision of a Court of Law could be obtained; and steps were taken for that purpose; but the Courts

decided against it.[1] A painful and protracted controversy then arose. Mr. Bradlaugh vacated his seat, and was (more than once) re-elected: and after his re-election he offered to take the oath in the usual form, but was not permitted by the majority of the House of Commons to do so. Contests of that kind, under our Constitution, can have but one end. My own opinion, which I did not conceal, was that the exclusion by a religious test of a member whom a particular constituency persists in returning, is unwise, not on political grounds only, but in the interest, rightly understood, of religion. The expression of that opinion brought upon me some correspondence with clergymen and others who differed from it, to whom I thus explained my reasons :—

I acknowledge, as you do, the Divine government of the universe; and I see, as a fact, that the Divine Ruler of the universe has not thought fit to take out of the world, or to prevent from being in it within the pale of civil government, men who reject His revelation of Himself, and even deny His existence. It is a part, therefore, of our probation here, to determine how those who do acknowledge His government and believe in His revelation as the guide of their lives ought to deal with unbelievers, in respect of their civil and political relations. Formerly, it was thought that those who would do God's service should put unbelievers to death, or at least put them under the ban of outlawry from all civil society. We are now far removed from

[1] Mr. Bradlaugh was before Lord Selborne both in the Court of Appeal and in the House of Lords, and Lord Selborne had a high opinion of Mr. Bradlaugh's ability and manner in conducting his case for himself. Mr. Bradlaugh took occasion, in a debate on the judicial estimates, to maintain that the office of Lord Chancellor was one of great value to the administration of justice, and fully worth the expense of maintaining it.—K. M. M.

that state of opinion and practice; and I cannot doubt, that you regard the change as not only consistent with, but resulting from, a truer and sounder appreciation of the real principles of Christianity. Our laws, at present, do not impose the test of an oath (such as that which Mr. Bradlaugh offered, but was not permitted, to take), for the exercise of any other kind or degree of political power in this country, except a seat in Parliament and one or two great offices of State: and they do not practically exclude, or attempt to exclude, unbelievers from Parliament by anything like a real or effective test: affirmation being allowed in several large classes of cases, none of which necessarily presuppose belief; and it being contrary to the practice of Parliament to permit any questions to be asked, or any extrinsic evidence of a man's professed and avowed opinions to be received, when he offers either to affirm or take the oath in the form prescribed by law. To refer to a statement made in the House of Commons a year before, after a different election, as to a condition of mind which was then alleged to be within the Evidence Acts as to affirmations in Courts of Justice, was, in my judgment, to act upon extrinsic evidence; and that of a very inconclusive kind, if there had been no other means of knowledge in the case.

I do not pretend to impose my own interpretation of Scripture dogmatically upon others. But I find there no law, rule, or principle, on which to found any exclusive or theocratic constitution of civil society or political institutions. I do find texts,[1] the bearing of which seems to me to be *against* the exclusive principle, when secular and not religious or ecclesiastical, and political, not personal, relations are concerned.

Mr. Bradlaugh's case is, no doubt, one which tries the principle: he is active and energetic, both in the profession and in the propagation of opinions abhorrent to good Christians; and it is, on that account, much to be regretted that he should have been thought by any constituency fit to represent them in Parliament. But *that* it has not been in your power or mine to prevent. And, this being so, the very qualities which make the man conspicuous in the ranks of the enemies of our faith seem

[1] Such, *e.g.*, as Matthew v. 44-48 and xiii. 24-30; and 1 Corinthians v. 9, 10.

to me to increase the responsibility of those who take a course likely to exalt him, in the eyes of the multitude, as a champion and martyr in the cause of political freedom. My principles forbid, not command, me to take a share of that responsibility.[1]

To H. C. Wilkins, Esq.

30 Portland Place, W., 16*th April* 1883.

Sir—I must ask you to excuse me for my delay in acknowledging your letter of the 29th March.

I cannot be surprised that a resident at Northampton should have a special feeling upon the subject on which you write: and, while I differ from you entirely as to the Affirmation Bill, I respect the motives by which you are actuated.

But I, being (as I trust) actuated by the same motives, am led, under their influence to the opposite practical conclusion.

There is certainly no Divine Law which prescribes, as a national duty, such a form of oaths as that with which the Affirmation Bill would dispense (or, indeed, any oath whatever) as a test of admissibility to a seat in the Legislature, or to any other kind of political franchise. That being so, it appears to me to be my duty to consider, whether good or evil is done by retaining such an oath for the purpose of excluding unbelievers, in our present circumstances; and when a constituency such as Northampton insists on returning them, I am convinced, that harm is done by it in every way; and that those who insist on retaining it are (contrary to their intention) making themselves, practically, the allies of Mr. Bradlaugh and his opinions, by inducing very large numbers of thoughtless people, who might not otherwise be attracted either to the man or to his opinions, to regard him as a martyr, and a champion of political liberty.—I am, sir, your obedient servant, Selborne.

In September 1880 the Lord Chief Baron, Sir Fitzroy Kelly, died; and Lord Coleridge suggested to Mr. Gladstone and myself that the office so vacant

[1] Written May 18, 1881.

should not be filled up till the question of its abolition could be considered by a Council of Judges. Before such a Council could be assembled, the place of Chief Justice of England also became vacant, by the sudden death of Sir Alexander Cockburn at the end of November. I had been sitting with him in the Court of Appeal a few days before; and he told me, with great calmness, that he was suffering from *angina pectoris*, the fatal nature of which he evidently knew. He looked so well and vigorous, that I could not help hoping, and saying, that his physicians might be mistaken. But the event proved that there was no mistake. The concurrence of those two vacancies, and the disinterestedness of Sir Henry James, the Attorney-General (who desired that no claims to promotion which he might be considered to have should stand in the way), gave opportunity for the consolidation of the Common Pleas and Exchequer Divisions of the High Court of Justice with the Queen's Bench Division. It had been foreseen, when the Judicature Act was passed in 1873, that the time might come when this would be desirable; and power was taken to do it by Order in Council, upon the advice of a General Council of the Judges of the Supreme Court. Lord Coleridge was made Lord Chief Justice of England; and the Judges, by a large majority, advised the Crown to make the necessary order for consolidating the three Divisions: which was done.[1]

[1] Lord Selborne wrote with his own hand a long letter to all the Judges setting forth the reasons for the change: he also drew with

Sir Fitzroy Kelly had in his early days a great reputation at the Bar: but he was a prolix and rather tedious speaker; and it could not be said of him, either in public or in private, that he always governed his words with discretion. He was a sound common-lawyer, a patient listener, and a very good-natured man; and probably he was as good a Chief Baron as most of his predecessors.

Sir Alexander Cockburn was a much more remarkable person. He had gifts approaching to genius. French on his mother's side, with a perfect knowledge of that language and other fine accomplishments, he had a Frenchman's clearness, vivacity, and mobility of intellect. A small spare man, of good figure, with light red hair, sanguine complexion, and refined and expressive angular features, his air was marked by consciousness of power. Even when a junior upon the Western Circuit, the reports which came up from the Assizes to the London press described the eloquence of his addresses to juries in terms so unusual, as to produce among those who were strangers to him the impression that he must have a puffer among the reporters. But when he came into the House of Commons, it was found that those descriptions did not exceed the truth. As an advocate, he was only second to Erskine, and much surpassed Erskine as a Parliamentary orator. His life had been irregular, his *amour propre* was strong, and his feelings were

his own hand the resolutions proposed at the Council, and the elaborate clauses of the Order in Council which carried out the work.—K. M. M.

quick and excitable. To obtain influence with him required some tact, allowance for his humours, and study of his character; but those who once gained his goodwill found him warm-hearted and generous. On the Bench, as at the Bar, he was splendid rather than learned or profound; but he was able to make himself master of any subject which gave scope for his powers, and took pains to do so. He loved to try sensational cases, and to get to the bottom of them, sifting minutely every detail with a wonderful display of acuteness, but often at too great an expense of time, as in the case of the Tichborne trial, when his summing-up lasted for twenty days. Notwithstanding his weaknesses, I had a sincere regard for him; and I should have been ungrateful if it had been otherwise, for he treated me with invariable kindness.

END OF VOL. I

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